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The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment ARM 24.17.127 pertaining to prevailing wages	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 16, 2024, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/88554783437
Meeting ID: 885 5478 3437, Passcode: 531171
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 885 5478 3437, Passcode: 531171

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on December 9, 2024, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rule proposed to be amended is as follows, new matter underlined, deleted matter interlined:

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) through (1)(d) remain the same.

(e) The current building construction services rates are contained in the ~~2024~~ 2025 amended version of the "Montana Prevailing Wage Rates for Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2024~~ 2025 version of the "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) The current heavy construction services rates are contained in the ~~2024~~ 2025 amended version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) The current highway construction services rates are contained in the ~~2024~~ 2025 version of the "Montana Prevailing Wage Rates for Highway Construction Services" publication.

(2) remains the same.

(3) The standard prevailing rates of wages publications are adopted and incorporated by reference. Copies of the rates are available upon request from the

~~Labor Standards~~ Operations Bureau, Employment ~~Relations~~ Standards Division, Department of Labor and Industry, ~~1805 Prospect Avenue~~ 301 Park Avenue, P.O. Box 8011, Helena, MT 59604, (406) 444-6543, or online at ~~www.mtwagehourbopa.com~~ https://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates/.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to update the prevailing wage rates for building construction services, heavy construction services, highway construction services, and nonconstruction services following the annual survey of wages that is provided for in 18-2-413, 18-2-414, and 18-2-415, MCA, respectively. The department surveys employers and applies the methodologies provided by ARM 24.17.119 through 24.17.122 to determine those prevailing wage rates.

4. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728, Helena, Montana 59624. Comments must be received no later than 5:00 p.m., December 20, 2024.

5. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and rules.mt.gov.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728, Helena, Montana 59624, and indicating the program or programs about which they wish to receive notices.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

9. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ SARAH SWANSON
Sarah Swanson, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State November 12, 2024.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through III, the amendment of ARM 42.15.108 through 42.15.110, 42.15.119, 42.15.120, 42.15.204, 42.15.216, 42.15.220, 42.15.301, 42.15.303, 42.15.315 through 42.15.317, 42.15.319, 42.15.327, 42.15.328, 42.15.602, 42.15.603, 42.15.802 through 42.15.807, 42.15.906, 42.15.1002 through 42.15.1004, the amendment and transfer of ARM 42.15.112, 42.15.214 and 42.15.415, and the repeal of ARM 42.15.205, 42.15.206, 42.15.213, 42.15.215, 42.15.217 through 42.15.219, 42.15.221, 42.15.222, 42.15.312, 42.15.318, 42.15.321, 42.15.322, 42.15.401 through 42.15.403, 42.15.427, 42.15.510, 42.15.523 through 42.15.527, and 42.15.902 pertaining to the implementation of Senate Bill 399 (2021) (SB 399), Senate Bill 104 (2023) (SB 104), House Bill 221 (2023) (HB 221), and House Bill 447 (2023) (HB 447) regarding Montana individual income taxes	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AMENDMENT AND TRANSFER, AND REPEAL

TO: All Concerned Persons

1. On December 16, 2024, at 11:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed rulemaking for the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 29, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY The department proposes to adopt, amend, repeal, and transfer the above-described rules for the primary purpose of implementing Senate Bill 399 (2021) (SB 399), Senate Bill 104 (2023) (SB 104), House Bill 221 (2023) (HB 221), and House Bill 447 (2023) (HB 447). Changes across ARM Title 42, chapter 15, are necessary to align the administrative rules with these legislative changes and to improve the clarity and organization of content.

Notably, SB 399 simplified Montana's statutory individual income tax filing requirements by revising filing status elections, repealing Montana-specific standard and itemized deductions, and eliminating many Montana adjustments to income.

SB 399 amended 15-30-2113, MCA, which requires individuals to use the same income tax filing status for their Montana return as they use for their federal return. The significance of this change is that married couples may only file separate income tax returns for Montana if they have also filed separate federal income tax returns. So rule references related to a couple filing separate Montana returns are now obsolete and require repeal.

SB 399 also amended filing requirements under 15-30-2602, MCA, for married couples who either (1) do not have the same residency status (e.g., one is a resident, the other is a nonresident); or (2) both are nonresidents, but one spouse has Montana source income. The department proposes rule amendments, where necessary, to clarify that nonresident couples' Montana filing status is the same as their federal filing status (i.e., a joint return), and provide instruction on how taxpayers complete a Nonresident/Part-Year Resident Ratio Schedule to determine their Montana tax liability.

With SB 399's enactment of 15-30-2120, MCA, computation of Montana taxable income now starts with federal taxable income and has fewer adjustments as compared to previous iterations of Montana's tax laws. So the department proposes several rule amendments or repeals to reflect that Montana follows a taxpayer's federal elections about standard and itemized deductions, and that certain subtractions and other adjustments (such as unemployment compensation and some interest income exceptions) are no longer applicable.

SB 104's amendments to 15-30-2120, MCA, also provide an exclusion for certain military retirees working in Montana and adjustments to federal taxable income to determine Montana taxable income. Accordingly, the department proposes the adoption of NEW RULE I and NEW RULE II to implement the exclusion, define necessary terms, and provide examples of common scenarios involving the income exclusion. The department also proposes the creation of a new subchapter 15 within ARM Title 42, chapter 15, to contain all rules related to military servicemembers and their spouses; therefore, ARM 42.15.112, 42.15.214, and 42.15.415 are proposed for amendment and transfer to subchapter 15.

Following SB 399's repeal of the two percent capital gains credit provided in 15-30-2301, MCA, HB 221 amended 15-30-2103, MCA, to include a net capital gains credit based on tax brackets, filing status, and income levels. Based on these changes, the department finds it necessary to propose to adopt NEW RULE III to explain the treatment of these gains, generally, and provide a computation methodology for nonresidents with Montana capital gains so that nonresidents are not subject to a higher effective rate than a resident would pay on the same gains.

HB 447, enacted as 15-30-2106, MCA, provides an exemption from Montana income tax for workers employed in the state for 30 days or less. The department proposes to amend ARM 42.15.301 to address filing requirements for nonresident workers.

The department notes there are references throughout ARM Title 42, chapter 15 that list the department's physical address and website as a means for taxpayers to file individual income tax returns with the department. Because these are both subject to change and the department's organizational rule (ARM 42.1.101) includes all department addresses, the department proposes to remove the unnecessary redundancies and rely on the organizational rule, our website, and tax return instructions for the department's most up-to-date contact and filing information.

The department also proposes several global amendments within the rules which seek to improve sentence grammar, structure, verb tense, and verbiage with the goal of improving overall readability. These types of amendments are also necessary to improve consistency of content for the rules, especially where rules have not substantively changed over a prolonged period or because the rules were not amended in a comprehensive (i.e., chapter-wide) fashion and had numerous contributing content editors.

Finally, the department proposes necessary amendments to several rules' implementing statutes because SB 399 repealed numerous statutes and 2-4-305(3), MCA, requires each rule specify the statute(s) that authorize the agency to adopt rules and those statute(s) which the rules purport to implement.

While this general statement of reasonable necessity covers the basis for the proposed rule adoptions, amendments, repeals, and transfers, it is supplemented below to explain rule-specific proposals.

4. The rules proposed to be adopted are as follows:

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

(1) "Armed forces" means the same as the term provided in 10 USC § 101 and includes the Army, Navy, Marine Corps, Air Force, Space Force, or Coast Guard. For the purposes of administering these rules, the term also includes the Montana Army National Guard or the Army National Guard of other states; the Montana Air National Guard or the Air National Guard of other states; or a reserve component, as defined in 38 U.S.C. 101, of the United States armed forces.

(2) "Montana source wage income" means the same as the term defined in 15-30-2120, MCA, and does not include income from any passive activity as that term is defined in 26 USC 469(c). This definition is not the same as the definition of Montana source income in 15-30-2101, MCA, and is used in the calculation of the working military retiree income exclusion.

AUTH: 15-1-201, MCA
IMP: 15-30-2120, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt NEW RULE I

which is necessary to include definitions of commonly used terms that will be used in the proposed subchapter 15.

NEW RULE II WORKING ARMED FORCES/MILITARY RESIDENT RETIREE TAXABLE INCOME EXCLUSION (1) A Montana resident who retired from the armed forces is entitled to an exclusion from taxable income received after December 31, 2023, as provided in 15-30-2120, MCA, in an amount equal to the lesser of their Montana source wage income or fifty percent of their military retirement income. The exclusion is available to an individual who began to receive military retirement income while a resident and an individual receiving military retirement income who became a resident after June 30, 2023.

(2) An individual who received military survivor benefits while a resident or an individual who received military survivor benefits who became a resident after June 30, 2023, may exclude fifty percent of the benefits received after December 31, 2023, which are included in their federal taxable income.

(3) Informational examples regarding the exclusion administered under this rule are as follows:

(a) Wes entered service into the Air Force while a Montana resident and maintained his residency. He retired September 30, 2023, and returned to Montana to work a full-time job. If his wages are $50,000 and his military retirement income is $40,000, he can exclude $20,000 from his federal taxable income which is the lesser of his Montana source wage income or fifty percent of his military retirement income.

(b) Assuming the same military service and residency for Wes as in (a), but Wes works seasonally earning $18,000, which is reported on his Schedule C as self-employment income. Wes' exclusion amount is limited to his self-employment income of $18,000.

(c) Megan was a Florida resident serving in the Navy outside of Montana. Megan retired, started receiving her military retirement on August 30, 2023, and permanently moved to Montana soon after. Megan is eligible for the exclusion because she became a resident after June 30, 2023.

(d) Jake was a Texas resident serving in the Army outside of Montana. Jake retired, started receiving his military retirement on April 30, 2023, and permanently moved to Montana on May 17, 2023. Jake is not eligible for the exclusion because he began receiving his military retirement while a nonresident and became a resident prior to June 30, 2023.

AUTH: 15-1-201, MCA
IMP: 15-30-2120, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt NEW RULE II which is necessary to implement SB 104, outline the criteria for the exclusion, and provide examples for taxpayer guidance.

NEW RULE III NET LONG-TERM CAPITAL GAINS-CALCULATION OF TAX FOR PART-YEAR RESIDENTS AND NONRESIDENTS (1) The tax on net long-term capital gains recognized by nonresidents equals the tax on them, calculated

under 15-30-2103(2), MCA, multiplied by the ratio of net long-term capital gains sourced to Montana under 15-30-2104, MCA, to the total net long-term capital gains from all sources.

(2) When net long-term capital gains are recognized by a nonresident taxpayer, the amounts of net long-term capital gains must be excluded from the numerator and the denominator of the ratio provided under 15-30-2104, MCA, to calculate the tax under 15-30-2103(2), MCA.

(3) Informational examples regarding net long-term capital gains administered under this rule are as follows:

(a) Married nonresident taxpayers filing jointly in 2024 recognize a net taxable loss of ($100,000) and a net long-term capital gain of $50,000 which is sourced to Montana. Even though the Montana source income is positive, their tax liability is zero because the total taxable income is zero and 15-30-2103(1), MCA, does not create a separate tax on net long-term capital gains.

(b) Assuming the same taxpayers as in (a), except that they recognize a net taxable income of $71,000, comprised of $21,000 in ordinary income and $50,000 in net long-term capital gains. The first tax rate applied is the tax on ordinary income which is 4.7 percent. The lower capital gains rate under 15-30-2103(2), MCA, is applied to the first $20,000 of capital gains with the remaining $30,000 subject to the upper rate.

(c) Assuming the same taxpayers as in (a) and (b) except income is $40,000 of the net long-term capital gains sourced to Montana, $7,000 of the nonqualified taxable income sourced to Montana and the ratio of Montana net long-term capital gains to capital gains from all sources is 0.80. The nonresident tax under 15-30-2103(2), MCA, equals $1,464 [$1,830 x 0.8]. The nonresident ratio applied against the tax on the remaining nonqualified income is one-third. The nonresident tax on nonqualified taxable income is $329 [($21k x 0.047) x 0.333]. The total tax for the nonresident is $1,793.

AUTH: 15-1-201, MCA
IMP: 15-30-2103, 15-30-2104, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt NEW RULE III which is necessary to implement HB 221 and provide taxpayer guidance and a computation methodology for nonresidents to determine their tax on net long-term capital gains. The rule addresses a scenario where a nonresident may have positive Montana source net long-term capital gains but lower, or zero, taxable income. Strict application of 15-30-2103, MCA, may lead to the nonresident paying more tax than a similar scenario that did not include capital gains. The rule outlines a computation that accounts for this situation and the examples in (3) offer hypothetical situations for application of the requirements.

5. The rules proposed to be amended are as follows, new matter underlined, deleted matter interlined:

42.15.108 DETERMINING TAX LIABILITY (1) A person required to file a Montana Individual Income Tax Return must determine their Montana income tax liability ~~as provided by~~ in accordance with the applicable Montana statutes and administrative rules. All income, except income specifically exempted in Title 15, chapter 30, MCA, or these rules, is included in determining income subject to Montana income tax.

(2) The administrative rules ~~for~~ applicable to determining ~~if an individual, whether resident for a full or part tax year, or a nonresident,~~ who must file a Montana Individual Income Tax Return, are located in ARM Title 42, chapter 15, subchapter 3.

(a) ~~Special rules, located in ARM Title 42, chapter 15, subchapter 1,~~ Rules that apply to ~~certain wages of nonresident military servicepersons and~~ enrolled tribal members are located in ARM Title 42, chapter 15, subchapter 1.

(b) Rules that apply to certain wages and other income of resident and nonresident military servicemembers and the spouses of nonresident military servicemembers are located in ARM Title 42, chapter 15, subchapter 15.

~~(2) All income except income specifically exempted in Title 15, chapter 30, MCA, or these rules is included in determining income subject to Montana income tax.~~

(3) The starting point for computing Montana individual income tax liability is ~~usually adjusted gross income as determined for federal income tax purposes~~ a taxpayer's federal taxable income, excluding the qualified business income deduction under IRC section 199A. If a taxpayer is not required to~~, or does not,~~ file a federal income tax return for a tax year ~~for which the taxpayer is required to file a Montana individual income tax return~~, but is still required to file a Montana tax return as outlined in 15-30-2602(1)(b), MCA, and ARM 42.15.301, the taxpayer shall compute federal ~~adjusted gross~~ taxable income and complete the applicable federal schedules. The federal computations and tax schedules required by this rule are tax records that the taxpayer must ~~retain and provide the department on request~~ include with their Montana income tax return.

(4) Federal ~~adjusted gross~~ taxable income is adjusted for Montana additions and subtractions to arrive at Montana ~~adjusted gross~~ taxable income. The subtractions reduce the amount of income subject to tax for all taxpayers~~, whether they claim the Montana standard deduction or itemized deductions~~.

(5) The ~~additions~~ adjustments to taxable income for which additional rules are provided include:

~~(a) an S corporation shareholder's share of federal income tax paid by the S corporation located in ARM Title 42, chapter 9, subchapter 4;~~

~~(b)~~ (a) ~~unqualified~~ nonqualified withdrawals from medical savings accounts located in ARM Title 42, chapter 15, subchapter 6; ~~and~~

~~(c)~~ (b) ~~unqualified~~ nonqualified withdrawals from first-time home buyer accounts located in ARM Title 42, chapter 15, subchapter 9~~.~~;

~~(6) Unless otherwise specified below, rules that address subtractions are found in ARM Title 42, chapter 15, subchapter 2. The subtractions for which additional rules are provided include:~~

~~(a) certain military salary of resident servicepersons;~~

~~(b) certain interest income of taxpayers 65 and older;~~

~~(c) interest on federal obligations, and mutual fund dividends attributable to interest on federal obligations;~~

~~(d) certain disability income;~~

~~(e) certain capital gain income realized on or before December 31, 1986, that is being recognized on the installment reporting method;~~

~~(f) certain pension and annuity income;~~

~~(g) certain income of enrolled tribal members;~~

~~(h) certain income of a dependent child included in a parent's federal adjusted gross income;~~

~~(i) certain taxed social security benefits;~~

~~(j)~~ (c) ~~certain~~ contributions to, and earnings on, medical savings accounts~~,~~ located in ARM Title 42, chapter 15, subchapter 6;

~~(k)~~ (d) ~~certain~~ contributions to, and earnings on, family education savings accounts~~,~~ located in ARM Title 42, chapter 15, subchapter 8;

~~(l)~~ (e) ~~certain contributions to and~~ earnings on first-time home buyer savings accounts~~,~~ located in ARM Title 42, chapter 15, subchapter 9; and

(f) military retirement income located in ARM Title 42, chapter 15, subchapter 15.

~~(m) dividends and capital gains realized from investment in certain small business investment companies, ARM Title 42, chapter 15, subchapter 2 and chapter 23, subchapter 1~~.

~~(7) After Montana adjusted gross income is determined, a taxpayer is allowed the standard deduction unless the taxpayer claims itemized deductions. The standard deduction is addressed in ARM Title 42, chapter 15, subchapter 5.~~

~~(8) Unless otherwise specified below, rules that address itemized deductions are found in ARM Title 42, chapter 15, subchapter 5. As provided in 15-30-2133, MCA, deductions for expenses associated with the excluded income described in (6) are not allowed. Additional rules related to itemized deductions include:~~

~~(a) a rule describing the calculation of itemized deductions that are limited to a percent of Montana adjusted gross income;~~

~~(b) a rule describing how certain itemized deductions must be computed when a married taxpayer filing a joint federal income tax return files a separate Montana return; and~~

~~(c) a rule describing calculation of the Montana net operating loss.~~

~~(9) After income is reduced by the standard deduction or itemized deductions, it is further reduced by personal and dependent exemptions to determine Montana taxable income. The rules relating to personal and dependent exemptions are found in ARM Title 42, chapter 15, subchapter 4.~~

~~(10)~~ (6) The tax rates ~~set forth~~ provided in 15-30-2103, MCA, are applied to Montana taxable income. Tax brackets are adjusted annually for inflation. The Montana tax liability of a nonresident or part-year resident is determined by ~~multiplying the calculated tax by the ratio of Montana source income to total income~~ the process and requirements outlined in ARM 42.15.110 and [NEW RULE III].

~~(11)~~ (7) Rules describing credits that may be taken against income tax liability are located in ARM Title 42, chapter 4.

AUTH: 15-30-2620, MCA

IMP: 15-30-2101, 15-30-2102, 15-30-2103, 15-30-2104, ~~15-30-2110,~~ 15-30-2114, 15-30-2131, 15-30-2153, 15-30-2602, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.108 to implement SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA, as outlined in the department's general statement of reasonable necessity.

Amendments are also proposed for the rule to reflect a statutory change in when filing a Montana return is required. Under 15-30-2602, MCA, any individual required to file a federal return who is either a Montana resident or is a nonresident with Montana source income is required to file a Montana return. A Montana return is also required if an individual has positive Montana taxable income in any amount after applying Montana adjustments to income.

42.15.109 RESIDENCY (1) As provided in 15-30-2101, MCA, an individual may be a resident for Montana individual income tax purposes if the individual is domiciled in the state or maintains a permanent place of abode in the state. Section 1-1-215, MCA, sets forth rules for determining residency, and "domiciled" is defined in ARM 42.2.304. Whether an individual is a Montana resident for Montana income tax purposes is determined in light of all facts and circumstances.

~~(2) A Montana resident who enters the United States armed forces does not lose that status as a Montana resident solely by reason of being absent from this state in compliance with military orders.~~

~~(3) Special rules regarding nonresident military personnel and their dependents are located at ARM 42.15.112.~~

AUTH: 15-30-2620, MCA
IMP: 15-30-2101, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.109 to remove rule text which pertains to the taxation of military servicemembers and their spouses and transfer it to ARM 42.15.112, which is proposed to be transferred to ARM 42.15.1510, as outlined in the department's general statement of reasonable necessity.

42.15.110 TAXATION OF PART-YEAR RESIDENTS AND NONRESIDENTS

(1) Part-year residents and nonresidents are subject to the same filing requirements as residents unless otherwise expressly exempted in statute.

(2) Part-year residents and nonresidents must include all Montana source income on ~~Schedule IV of~~ Form 2, Schedule II - Tax on Montana Source Income. Montana source income is defined in 15-30-2101, MCA.

(3) Part-year residents and nonresidents compute their tax liability by multiplying the ratio of their Montana source income to everywhere income from all sources by the tax determined as if they were a resident for the entire tax year. ~~They must complete Schedule IV, Nonresident/Part-Year Resident Tax, to~~ Completing Schedule II - Tax on Montana Source Income determines this ratio.

(4) ~~Part-year resident and nonresident estates and trusts are subject to the same filing requirements set forth in (1) through (3) unless otherwise expressly exempted in statute.~~ A married couple comprised of one resident and one nonresident or part-year resident, filing jointly, must complete the Schedule II - Tax on Montana Source Income to compute the ratio of Montana income to everywhere income.

(a) The ratio's numerator is everywhere income for the resident spouse and Montana source income for the nonresident or part-year resident spouse.

(b) The ratio's denominator is everywhere income for both spouses.

(c) If the income for either spouse includes capital gains that are subject to tax under 15-30-2103(2), MCA, the couple must complete the net long-term gains portion of the schedule to determine the ratio in (4). The numerator is then all net long-term capital gains for the resident spouse and Montana source net long-term capital gains for the nonresident or part-year resident spouse. The ratio's denominator is all net long-term capital gains for the married couple.

(5) A married couple filing under the terms of (4) is entitled to the credit for taxes paid to another state or country under 15-30-2302, MCA, only on income sourced to Montana based on residency which is subject to income tax in another state or country.

AUTH: 15-30-2104, MCA

IMP: 15-30-2101, 15-30-2103, 15-30-2104, ~~15-30-2110, 15-30-2111, 15-30-2114~~, 15-30-2120, 15-30-2131, 15-30-2132, 15-30-2151, ~~15-30-2152,~~ 15-30-2153, 15-30-2154, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.110 to implement SB 399 as outlined in the department's general statement of reasonable necessity and update the implementing statutes for the rule under 2-4-305, MCA.

In addition, the department proposes to amend the rule to improve guidance for married couples completing the Montana return when a joint federal return is filed, and where one spouse is a resident and the other is a nonresident (or part-year resident), or where only one nonresident spouse reports Montana source income.

42.15.112 (42.15.1510) NONRESIDENT MILITARY ~~PERSONNEL~~ SERVICEMEMBERS (1) ~~A n~~Nonresident members of the ~~United States~~ armed forces ~~who is~~ living in ~~this~~ the state solely ~~by reason of~~ for compliance with military orders does not become ~~a Montana~~ residents ~~solely by reason of being present in this state in compliance with military orders~~ and their military compensation ~~for military service~~ is not Montana source income. ~~Starting in 2009, some nonresident~~ Nonresident spouses who move to Montana solely to be with ~~that~~ nonresident ~~serviceperson are also allowed to~~ military servicemembers may retain their home residence ~~or "domicile"~~ and, subject to certain rules and limitations described in (6), their wage and other personal services income is not Montana source income.

(2) Nonresident military ~~servicepersons~~ servicemembers and their spouses are, except as provided in (4), subject to Montana individual income tax in the same manner and to the same extent as any other nonresident with Montana source income.

(3) As provided in 1-1-215, MCA, if a person claims a residence within Montana for any purpose, such as obtaining a resident hunting or fishing license, ~~that location~~ Montana is their residence for all purposes, including Montana individual income tax, unless there is a specific statutory exception. ~~The definition of "resident" in~~ Provided, however, 87-2-102, MCA, ~~permits~~ allows exceptions for certain nonresident military ~~personnel~~ servicemembers and their dependents to obtain resident hunting, fishing, and trapping licenses without subjecting them to individual income tax liability as residents.

(4) While the Montana income tax liability of nonresidents is usually determined by calculating the tax as if they were residents, then multiplying that calculation by their ratio of Montana source income to total income, the Military Family Tax Relief Act of 2003 requires states to implement special rules ~~when the nonresident is a~~ for military ~~serviceperson~~ servicemembers. If a nonresident ~~serviceperson~~ military servicemember with Montana source income or their spouse is required to file a Montana individual income tax return, the exempt military income must be excluded from both the numerator and the denominator in determining the ratio of Montana source income to total income as provided in ARM 42.15.110.

(5) An example of how the tax liability would be calculated is:

(a) A nonresident ~~serviceperson~~ military servicemember and their nonresident spouse who do not claim an exemption as described in (6)(b) are filing a joint return have the following income:

Military compensation	$40,000
Spouse's - Montana source income	$30,000
Interest income - Joint	$500
Dividend income - Joint	$1,000
Total Income	$71,500

(b) The exempt military compensation is a subtraction that reduces Montana ~~adjusted gross~~ taxable income:

Gross income~~:~~	$71,500
Less~~:~~ ~~E~~exempt military compensation	($40,000)
Montana ~~adjusted gross~~ taxable income	$31,500

~~(c) The Montana personal and dependent exemptions and either the standard deduction or itemized deductions are subtracted from Montana adjusted gross income to determine Montana taxable income:~~

~~Montana adjusted gross income~~	~~$31,500~~
~~Less: Deduction and exemptions~~	~~($17,340)~~
~~Taxable income~~	~~$14,160~~

~~(d)~~ (c) The tax, determined on the taxable income, is multiplied by the ratio of Montana source income to total income from all sources except the exempt military compensation:

Montana source income	$30,000
Total income from all sources except military compensation ($30,000 + 500 + 1,000) =	$31,500
Ratio $30,000/$31,500 =	.9523

~~(e)~~ (d) If the tax determined on the taxable income were $1,000, the ~~taxpayers'~~ Montana tax liability would be $952, the Montana tax liability of $1,000 multiplied by .9523, the ratio of $30,000 to $31,500.

(6) ~~Retroactive to the beginning of calendar year 2009, the~~ The Military Spouses Residency Relief Act, Public Law No. 11197 (MSRRA), enacted special rules that affect how Montana and other states tax the wage and other personal service income earned by nonmilitary spouses (for simplicity, the term "wages" will be used to describe all personal services income).

(a) If a military ~~serviceperson~~ servicemember and nonmilitary spouse are residents of the same state (the "home state")~~,~~ when the nonmilitary spouse moves to Montana ~~solely~~ to be with the military ~~spouse who is serving in Montana in compliance with military orders~~ servicemember as described in (1), the MSRRA allows the nonmilitary spouse to remain a resident of the home state~~. If that nonmilitary spouse does remain a resident of the home state,~~ and only the home state may tax the nonmilitary spouse's wages. Wages earned in Montana that are sourced to the home state are not Montana source income.

(b) Qualified nonmilitary spouses must claim ~~an annual~~ exemption from wage withholding annually by completing Form ~~MSR – Employee Certificate of Status under the Military Spouses Residency Relief Act.~~ MW-4 – Employee's Withholding and Exemption Certificate which they submit each year to their employer by end of the first payroll period in January.

(c) If ~~and when~~ a nonmilitary spouse no longer meets the requirements of the MSRRA, their wages ~~are~~ will be sourced to Montana, as provided in 15-30-2101, MCA. The following events disqualify the nonmilitary spouse's wages ~~for special treatment~~ under the MSRRA:

(i) the military ~~spouse~~ servicemember leaves the military;

(ii) the nonmilitary spouse becomes a resident of Montana;

(iii) the marriage to the military ~~spouse~~ servicemember terminates; ~~and~~ or

(iv) ~~physical separation due to a duty change when the military spouse's orders move them outside Montana and their spouse is allowed to join them but chooses not to.~~ the military servicemember is reassigned out of Montana but the nonmilitary spouse remains in Montana.

AUTH: 15-30-2620, MCA
IMP: 15-30-2101, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.112 and transfer it to ARM 42.15.1510 primarily to implement SB 399 and SB 104 as outlined in the department's general statement of reasonable necessity.

Further, the current version of the rule contains inconsistent references to military personnel (e.g., serviceperson, servicemember) and contains verbiage that can be stated more clearly and concisely, so the department proposes several

nonsubstantive edits for brevity and to improve clarity of the rule's content. Lastly, outdated references are proposed for removal and the process for a military servicemember's spouse to claim an exemption from wage withholding has been updated to more accurately reflect updated department practice which was modified for efficiency.

42.15.119 ALTERNATIVE TAX (1) A nonresident taxpayer whose only activities in Montana consist of making sales and do not include owning or renting real or tangible personal property and whose dollar volume of gross sales made in Montana during the taxable year does not exceed $100,000, may elect to pay a tax of ~~1/2%~~ one-half percent on the gross volume of sales made in Montana during the taxable year. Such tax is in lieu of the tax based upon net income as described in ~~15-30-2101(1)~~ 15-30-2103 and 15-30-2104(1)(a), MCA.

(2) The election to pay the alternative tax is made by filing ~~a return on~~ Form 2 and including Form DE, reporting the dollar amount of Montana gross sales, and paying a tax determined on the basis of ~~1/2%~~ one-half percent of the amount of such sales. The gross volume of sales made in Montana must be determined according to the provisions of paragraphs 16 and 17 of Article IV of the Multistate Tax Compact. A statement must be attached to the return to the effect that the taxpayer's only activities in Montana consist of making sales and do not include owning or renting real property or tangible personal property.

AUTH: 15-30-2104, 15-30-2620, MCA
IMP: 15-30-2104, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.15.119 to reflect a department change in a filing method for individuals reporting income tax to Montana under the alternative tax provisions. These individuals must now complete (new) Form DE and include a copy with their filed Montana Individual Income Tax Return (Form 2).

The department also proposes to update the statutory cross references in (1) and amend the format of the percentages in the rule for internal consistency with other department rules and for conformity with the style guide adopted by the Secretary of State for administrative rules.

42.15.120 APPORTIONABLE AND NONAPPORTIONABLE INCOME - APPORTIONMENT OR ALLOCATION - INDIVIDUALS, ESTATES, AND TRUSTS

(1) For purposes of the reporting requirements for individuals, trusts, and estates that have Montana apportionable or nonapportionable income and determining their Montana tax liability, the ~~department adopts by reference the~~ following rules contained in ARM Title 42, chapter 26 - Corporate Multistate Activities subchapters are cross referenced for guidance and applicability:

(a) 1 - General Provisions;

(b) 2 - Income Allocation and Apportionment, except ARM 42.26.204, 42.26.228, 42.26.229, and 42.26.260;

(c) 4 - Special Rules Related to Installment Sales;

(d) 6 - Railroads;
(e) 7 - Trucking;
(f) 8 - Airlines;
(g) 9 - Special Rules for Construction Contracts;
(h) 10 - Publishing Companies - Apportionment;
(i) 11 - Television and Radio Broadcasting;
(j) 12 - Telecommunication Services for Corporate Income Taxes; and
(k) 13 - Financial Institutions.

(2) The taxpayer may petition for, or the department may require, an alternative method of reporting activity in the state as provided in 15-1-601, MCA.

(3) When applying the rules referred to in (1), the terms "individual," "trust," or "estate" replace the term "corporation," and the provisions of Title 15, chapter 30, MCA, replace references to Title 15, chapter 31, MCA.

AUTH: 15-30-2620, MCA
IMP: 15-1-601, ~~15-30-2111~~ 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.120 as outlined in the department's general statement of reasonable necessity relative to updating the implementing statutes for the rule under 2-4-305, MCA, and to correct a minor, technical misstatement in (1) because the department does not adopt its own rules by reference but provides cross references to relevant rules for taxpayer and tax professional guidance.

42.15.204 DEFINITIONS The following definitions apply to ~~rules found in~~ this subchapter:

~~(1) "Armed forces" means the United States Army, Navy, Marine Corps, Air Force, or Coast Guard.~~

~~(2)~~ (1) "Obligation" means, for the purposes of determining the applicability of the exclusion of interest income, an interest-bearing financial instrument of the United States government, a state, or a political subdivision, in the form of a bond, other written certificate, or loan issued pursuant to the exercise of such governmental body's borrowing power for use in governmental operations.

AUTH: 15-30-2620, MCA
IMP: ~~15-30-2117~~ 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.204 as outlined in the department's general statement of reasonable necessity relative to SB 399, the transfer of military servicemember content to proposed ARM Title 42, chapter 15, subchapter 15, and updating the implementing statutes for the rule under 2-4-305, MCA.

42.15.214 (42.15.1510) RESIDENT MILITARY SALARY EXCLUSION (1) The following items of military compensation received by a resident ~~service member~~ military servicemember are exempt from Montana income tax:

(a) basic, special, and incentive pay received for serving on active duty as a member of the ~~regular~~ armed forces;

(b) basic, special, and incentive pay received for serving on active duty as a member of the National Guard ~~under Title 10 USC orders~~;

(c) basic, special, and incentive pay received by a member of a reserve component of the armed forces or a member of the National Guard, for active duty in a "contingency operation" as defined in 10 USC 101; and

(d) basic, special, and incentive pay received by a member of the National Guard performing a "homeland defense activity" as defined in 32 USC 901.

(2) Military compensation that is not exempt from Montana income tax includes:

(a) salary received for annual training and inactive duty training for service not described in (1)(b) through (1)(d);

(b) salary received by a member of a reserve component of the armed forces for service not described in (1)(b) through (1)(d);

(c) salary received by a member of the National Guard engaged in "active Guard and Reserve duty" as defined in 10 USC 101, for service not described in (1)(b) through (1)(d); and

(d) retired, retainer, or equivalent pay, or allowances <u>that do not fall under the subtraction for military retirement income found in 15-30-2120, MCA</u>.

~~(3) As provided in the Military Family Tax Relief Act of 2003, for federal income tax purposes a member of a reserve component of the armed forces may deduct certain travel expenses incurred after December 31, 2002, in connection with serving more than 100 miles away from home. Because the deduction reduces federal adjusted gross income, the deduction also reduces the service member's income subject to Montana tax.~~

AUTH: 15-30-2620, MCA
IMP: 15-30-2101, ~~15-30-2117~~ <u>15-30-2120</u>, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.214 and transfer it to ARM 42.15.1510 as outlined in the department's general statement of reasonable necessity relative to SB 399, the transfer of military servicemember content to proposed ARM Title 42, chapter 15, subchapter 15, and to update the implementing statutes for the rule under 2-4-305, MCA.

<u>42.15.216 EXCLUSION OF INTEREST ON OBLIGATIONS</u> (1) Interest on United States government obligations, as defined in ARM 42.15.204, and mutual fund dividends attributable to that interest, to the extent included in federal ~~adjusted gross~~ <u>taxable</u> income, are exempt from Montana income tax. Interest on obligations of U.S. territories and government agency obligations specifically exempted by federal law, and mutual fund dividends attributable to that interest, are also exempt from Montana income tax.

(2) United States obligations that are exempt include:

(a) series E, EE, F, G, H, and HH savings bonds;

(b) U.S. treasury bills;

(c) U.S. government notes; and

(d) U.S. government certificates.

(3) Interest received from guarantees that do not conform to the definition in ARM 42.15.204, or obligations guaranteed by the United States government including mutual fund dividends attributable to Government National Mortgage Association (Ginnie Mae) bonds, Federal National Mortgage Association (Fannie Mae) bonds, and Federal Home Loan Mortgage Corporation (FHLMC) securities, are not tax-exempt.

AUTH: 15-30-2620, MCA
IMP: ~~15-30-2110~~ 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.216 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.220 EXEMPTION OF CERTAIN INCOME OF ENROLLED TRIBAL MEMBERS (1) Wages are exempt from individual income tax when:

(a) the individual is an enrolled tribal member of the governing tribe of the reservation on which the enrolled tribal member works and resides; and

(b) the wages are derived from reservation sources.

(2) When wages are derived from both reservation sources and nonreservation sources, only wages derived from reservation sources are exempt from taxation, provided the individual meets all the criteria in (1).

(3) When a Native American does not reside on his or her reservation for an entire year, only wages earned while he or she was residing on the reservation are exempt from taxation, provided he or she meets all the criteria in (1).

(4) A Native American residing outside the boundaries of his or her reservation has no special exemption other than income derived directly from allotted or restricted lands, held in trust by the United States.

AUTH: 15-30-2620, MCA
IMP: 15-30-2101, 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.220 as outlined in the department's general statement of reasonable necessity to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.301 WHO MUST FILE RETURNS (1) The following persons must file an individual income tax return:

(a) every resident who is ~~a single person, and every resident who is a married person who does not elect or, as provided in ARM 42.15.321, is not allowed to elect, to file a joint return with a spouse, must file a return if the person's gross income from all sources for the taxable year is more than $4,370, adjusted as provided in (2)~~ required to file a federal income tax return;

(b) ~~married persons, both of whom are residents, not filing separate returns must file a joint return if their combined gross income for the taxable year from all sources exceeds $8,740, adjusted as provided in (2)~~ every nonresident with Montana source income, including net losses, who is:

(i) not eligible for the nonresident exclusion for temporary workers provided in 15-30-2106, MCA; or

(ii) from a pass-through entity and the nonresident's share of the income is not included in a return filed under either 15-30-3312 or 15-30-3326, MCA;

(c) ~~every nonresident who is a single person, and every nonresident who is a married person who does not elect or, as provided in ARM 42.15.321, is not allowed to elect, to file a joint return with a spouse, must file a return if the person has any Montana source income or loss and their gross income from all sources is more than $4,370, adjusted as provided in (2); and~~ an individual claiming an adjustment to federal taxable income if it results in Montana taxable income, as provided in 15-30-2602(1)(b), MCA; or

(d) ~~married persons, both of whom are full-year nonresidents, not filing separate returns, must file a joint return if either or both of them have any Montana source income or loss and their combined gross income for the taxable year from all sources exceeds $8,740, adjusted as provided in (2)~~ a Montana medical savings account holder who is a resident and required to report under ARM 42.15.602(3).

(2) ~~The minimum gross income amounts requiring filing a return shown in (1) were calculated for tax year 2014. Minimum gross income amounts~~ An individual not required to file a federal income tax return will still need to file a Montana individual income tax return in the following situations:

(a) ~~are adjusted annually in accordance with 15-30-2602, MCA. By November 1 of each year, the department will multiply the minimum amount of gross income necessitating filing by the inflation figure for the current taxable year;~~ they are claiming a refundable tax credit such as the Montana earned income tax credit or adoption credit; or

(b) ~~are increased by the value of any exemptions the person is entitled to for age 65 or for blindness, but are not also increased by the exemption allowed for all taxpayers under 15-30-2114(2)(a), MCA; and~~ they are requesting a withholding refund for overpaid withholding on Montana wages, withholding on wages earned by a nonresident military spouse, withholding on wages earned under the North Dakota reciprocity agreement, or mineral royalty withholding for an individual without a federal filing requirement.

~~(c) can be obtained for previous tax years by accessing the past-year downloadable tax forms from the homepage of the department's web site at revenue.mt.gov.~~

(3) The following persons must file a fiduciary return:

(a) the estate of a decedent who was a resident must file a return if its gross income for the year from all sources exceeds its federal exemption allowance;

(b) the estate of a decedent who was a nonresident must file a return if its gross income from all sources exceeds its federal exemption allowance, and the estate has any Montana source income; and

(c) a nonbusiness trust which is not a grantor trust and is subject to the Montana Trust Code, Title 72, chapter 33, MCA, must file a return if its gross income for the year from all sources exceeds its exemption allowance.

(4) A nonresident's distributive share of a pass-through entity's Montana source income is included in determining a nonresident's obligation to file a Montana individual income tax return. A nonresident whose only Montana source income for

the tax year is from one or more partnerships or S corporations, each of which has elected to file a composite return and pay a composite tax on behalf of consenting participants, is not required to file an individual income tax return. A nonresident who has Montana source income from a partnership or S corporation who does not elect to file a composite return or who has any other Montana source income (for example, wages from employment in Montana or rental income from property located in Montana), is required to file a Montana individual income tax return if the gross income from all sources, adjusted as provided in this rule, exceeds the applicable limit.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA
IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.15.301 to provide more specific guidance regarding who is required to file a Montana individual income tax return based on the statutory changes made by SB 399 and HB 447. The proposed amendments to the rule are necessary to outline that:

- a Montana individual income tax return must be filed if the individual is claiming an adjustment to federal taxable income that results in Montana taxable income. This requirement applies even if the taxpayer did not file a federal individual income tax return;
- a Montana individual income tax return must be filed if the individual is claiming a refund (i.e., a Montana refundable tax credit or a refund from excess withholding);
- that nonresidents are not required to file a Montana tax return if they meet the conditions to be considered a temporary worker under HB 447;
- nonresidents are exempt from filing a Montana individual income tax return if all their Montana source income is from a pass-through entity and reported on a composite or pass-through entity tax return.

42.15.303 ~~RETURNS FOR THOSE UNABLE TO MAKE OWN RETURN~~ FILING INDIVIDUAL INCOME TAX RETURNS USING A DESIGNEE (1) ~~Any~~ A taxpayer who ~~for any reason~~ is unable ~~to make a~~ to file their individual income tax return may have the return ~~made~~ filed by a designated agent. For purposes of this rule, a designated agent is a person designated by the taxpayer under a power of attorney, or ~~In~~ in the case of a minor, incapacitated person, or decedent, ~~the return may be made by the minor or by~~ a parent, guardian, or other court-designated person charged with the ~~minor's care or property~~ taxpayer's financial matters. ~~In the case of a taxpayer who is mentally or physically incapable of making a return, the return for such person shall be made by the guardian or other person charged with the care of the taxpayer's person or property.~~

(2) An individual income tax return must be filed for a decedent taxpayer covering the period from the beginning of the taxable year to the date of death. ~~If the deceased taxpayer was married, a joint return may be filed to include the income~~

~~of the decedent for the period the decedent was alive and the income of the surviving spouse for the entire taxable year. The executor or administrator of the decedent is responsible for making the decedent's return.~~

AUTH: 15-30-2620, MCA
IMP: 15-30-2602, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.303 as outlined in the department's general statement of reasonable necessity relative to SB 399, which requires individuals to use the same filing status as their federal return; therefore, the election provided in (2) is no longer an option. The department also proposes amendments as outlined in the department's general statement of reasonable necessity relative to grammar, sentence structure, and verbiage within the rules with the goal of improving the overall readability. And lastly, the department proposes amendments to acknowledge other valid legal and fiduciary-designated relationships which the current version of the rule does not include.

42.15.315 ORIGINAL AND AMENDED RETURNS (1) An original return is ~~considered to be the return that is~~ due on the ~~fifteenth day of the fourth month after the close of the taxpayer's tax year~~ prescribed filing date, as described in 15-30-2604, MCA, and ARM 42.15.319. The date prescribed for filing is the original return's due date, excluding extensions.

(2) An ~~O~~original return~~s are~~ is the Montana Form~~s~~ 2~~, 2EZ, and FID-3 only~~. ~~Montana Form 2M applies only to tax year 2014 and prior years.~~

(3) An amended return is not an original return but only a correction to an original return.

(4) ~~An amended return will not be accepted without an original return being on file with the department~~ The department will not accept an amended return if an original return has not been filed.

(5) ~~Late file~~ Interest, late filing, and late ~~pay~~ payment penalties are assessed as required under 15-1-216, MCA, on the ~~correct~~ amount due reported on the original return.

(6) ~~The late file~~ Interest, late filing, and late ~~pay~~ payment penalties ~~will be~~ are calculated from the due date in (1), and adjusted based on the corrected amount of tax due, which results from an amended return, adjustment from an audit, or correction to the original return.

~~(7) If required by 15-1-216, MCA, interest will be calculated on the original return. If an amendment is made to the original return, interest will be calculated as required under 15-30-2609 or 15-30-2602, MCA, as of the due date in (1).~~

~~(8)~~ (7) ~~An extension of time to file an original return does not extend the time to pay.~~ Taxes are due on the prescribed filing date. When an original return is filed after the prescribed date, but before the ~~extension~~ extended due date and payment is not made, the tax due is subject to interest and the ~~return is subject to late pay penalties~~ late payment penalty.

(8) The department may not issue a credit or refund of an overpayment of taxes shown on a return if:

(a) the return is filed more than one year after the expiration of a suspension of the federal statute of limitations for the collection of federal income tax;

(b) the return is filed more than three years after the prescribed filing date;

(c) for tax years beginning after December 31, 2016, the original return is filed more than three years after the date prescribed for filing and one year after an overpayment is made; or

(d) the return is filed more than 40 months and 15 days after the last month of the tax year that a net operating loss occurred within the limitations provided in 15-30-2609(2)(b), MCA.

~~(9) If an extension of time to file has been made and the original return was not filed before the extension deadline, the original return is subject to late file and late pay penalties.~~

~~(10)~~ (9) When an original return ~~for tax years beginning on or after January 1, 2010,~~ is filed after the extended due date, and the department does not issue the requested refund within 45 days of receiving the return, interest as allowed under 15-30-2609, MCA, is payable from the date the return was filed. For example, an original return for tax year ~~2016~~ 20X1 requesting a refund is filed November 12, ~~2017~~ 20X2, and the department does not issue the refund until January 30, ~~2018~~ 20X3. Refund interest is payable from the date the return was filed (November 12, ~~2017~~ 20X2) until the date the refund was issued (January 30, ~~2018~~ 20X3).

(10) The department may not pay interest on a refund under 15-30-2609, MCA, if the refund is:

(a) issued 45 days before the latter of:

(i) the prescribed filing date in (1); or

(ii) when the return was filed;

(b) as a result of a federal net operating loss carryback;

(c) in an amount less than $1;

(d) not the result of an actual tax liability; or

(e) from an amount by a taxpayer in which no items of Montana source income or loss were reported for the period.

(11) If the department sends a request for information to a taxpayer regarding a pending refund, the taxpayer must respond or request additional time within 30 days of the date of the request.

(a) If the taxpayer responds to the request from the department, interest will accrue from the date prescribed under 15-30-2609, MCA.

(b) If the taxpayer responds to the request after 30 days absent an agreement with the department for additional response time, interest will not accrue from the date of the request until the requested information is received by the department.

(c) If the taxpayer fails to respond to the request, the department may deny the refund request and issue an adjustment letter which explains the denial, as provided in ARM 42.2.510.

~~(11) The appeal process, provided in ARM 42.2.613 through 42.2.621, will apply to adjustments and corrections made by the department to a filed amended return.~~

AUTH: 15-30-2620, MCA

IMP: 15-1-216, 15-30-2512, 15-30-2602, 15-30-2609, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.15.315 to reflect statute of limitations revisions enacted under Senate Bill 65 (2023) (SB 65).

The department proposes to include the "date prescribed for filing" in (1) because the phrase is frequently referenced throughout Title 15, chapter 30, part 26, MCA, and clarity of its application is advisable. Further, and because there is automatic extension to file returns in 15-30-2604(3)(a), MCA, it is necessary to clarify that the date prescribed for filling is the original due date of the return.

The department proposes to remove "Forms 2EZ and 2M" in (2) because these forms were discontinued in 2018 and 2015, respectively.

The department proposes to amend (4) to improve sentence structure and readability of the rule section.

The department proposes to add "interest" to current (5), (6), and proposed (7), while striking current (7). These rule sections discuss situations where the department is required to assess late filing and late payment penalties. Because interest is always assessed when the late payment penalty is assessed, adding the interest component to the rule section is necessary. Removing current (7) is proposed because it is unnecessarily redundant based on the proposed amendments. The department also proposes to reword late filing and late payment penalties in the rule to align with 15-1-216, MCA.

The department proposes to remove the first sentence in proposed (7), as it is stated in 15-30-2604(5), MCA. The department proposes to add a new sentence to the section to clarify that taxes are due on the date prescribed for filing, as described in (1).

The department proposes to remove current (9) because it is no longer necessary. Section 15-30-2604(3)(a), MCA, provides an automatic extension of six months for a taxpayer to file their return. As a result, the taxpayer is not required to file for an extension of time to file the return and a late filing penalty will not be assessed if an extension is not made. Further, a tax return is not subject to late payment penalties. The tax is subject to the late payment penalty and is addressed in proposed (7).

The department intends to add proposed (8) to clarify an often-confusing statutory provision in 15-30-2609(2), MCA, to which the department frequently receives appeals and questions. First, the amendment explains 15-30-2609(2), MCA, in simpler terms and provides examples of four scenarios where the department cannot issue a refund. Second, the department proposes new (8)(c) to clarify "one year from the date of the overpayment is made." This clause could be misconstrued that a taxpayer could make an overpayment at any time just to extend the revision period, but the intent of the law is to allow the department to issue a refund when a taxpayer has made a payment for an estimated liability while they are working to file their return. The phrase "or filing" is meant to reference the original filing of the return when an overpayment is made.

The department proposes to amend proposed (9) to strike the phrase "for tax years beginning on or after January 1, 2010." This clause is no longer necessary in

the determination of refund interest as tax year 2011 is outside of the statute of limitations for a refund. The department also proposes a year example format that uses the sequence of years through the use of the last number in the year. The new format will be 20X1, 20X2, 20X3, etc. This method should be familiar to tax professionals and filers as the IRS uses this format in its regulations and is a continuation of similar rule changes adopted under MAR Notice Nos. 42-1079 and 42-1081.

Proposed (10) clarifies the application of the statute of limitations for refund claims in several scenarios and proposed (10)(c) is consistent with the changes to 15-30-2609, MCA, made by SB 65.

The department relies on 15-30-2609(4)(a), MCA, for guidance during the audit of a refund and proposes to add proposed (11) to clarify procedures. While the statute implies the procedure for the delay of the accrual of interest, proposed (11) explains the department's procedure related to the delay of the accrual of interest when the burden of proof is on the taxpayer to furnish information about their refund request.

Lastly, the department proposes to remove current (11) as the section is in conflict with ARM 42.2.510. ARM 42.2.510 requires the department to send a Notice of Assessment (NOA), as defined in ARM 42.2.304(36), when a return is adjusted. The NOA must include information about the taxpayer's appeal rights. The taxpayer must first file a request for informal review. If the department makes a determination that the taxpayer does not agree with, the taxpayer can file a Notice of Referral to the Office of Dispute Resolution (ODR). ARM 42.2.510(7) states that "Once the matter is submitted to the ODR, ARM 42.2.613 through 42.2.621 apply." Therefore, the taxpayer must first follow the guidelines in ARM 42.2.510 before following the guidelines outlined in current (11).

42.15.316 EXTENSIONS AND ESTIMATED PAYMENTS ~~(1) For tax years beginning after December 31, 2015, and before January 1, 2017, a six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the following conditions are met on or before the due date of the return:~~

~~(a) the taxpayer has applied for an extension of time to file their federal income tax return; and~~

~~(b) the taxpayer has paid either through withholding, estimated tax payments, or a combination of withholding and estimated payments, either of the following:~~

~~(i) 90 percent of their current year's income tax liability; or~~

~~(ii) 100 percent of their prior year's income tax liability.~~

~~(2)~~ (1) A taxpayer's tax liability and percent ~~level~~ threshold of payment are determined as provided in ARM Title 42, chapter 17, subchapter 3.

~~(3)~~ (2) If a taxpayer does not meet either of the required payment thresholds as required by 15-30-2604, MCA, late pay and late ~~file~~ filing penalties will be applied as provided in 15-1-216, MCA.

~~(4)~~ (3) Underpayment interest, as provided in 15-30-2512, MCA, accrues to the original due date of the return. Interest from and after the original due date of the return accrues as provided in 15-1-216, MCA, whether or not the time for filing the return has been extended.

~~(5)~~ (4) The underpayment is calculated as provided in ARM Title 42, chapter 17, subchapter 3.

~~(6) For tax years beginning after December 31, 2011, and before January 1, 2017, an individual whose income tax liability for the current year is $200 or less, and who pays the entire tax liability and files his or her return on or before the extended due date provided for in 15-30-2604(3)(a), MCA, will not be charged interest or the penalties for late filing and late payment.~~

~~(7)~~ (5) ~~For tax years beginning on or after January 1, 2017, a~~ A six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the tax, penalty, and interest are paid when the return is filed.

~~(8)~~ (6) Taxpayers who are either first time filers, or have a zero or negative taxable income for the previous year, are considered to have paid 100 percent of the previous year's tax for purposes of meeting the threshold requirements in 15-30-2604, MCA.

AUTH: 15-30-2620, MCA
IMP: 15-1-201, 15-1-216, 15-30-2604, 15-30-2609, 15-30-2651, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.316 as outlined in the department's general statement of reasonable necessity to remove provisions that are out-of-date and no longer applicable and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.317 FILING DATE (1) In lieu of other evidence, a postmark issued by the United States Postal Service is considered the date of filing. To be timely, paper filings must be postmarked on or before the due date.

AUTH: 15-30-2620, MCA
IMP: ~~15-30-2504,~~ 15-30-2507, 15-30-2604, 39-71-2503, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.317 to update the implementing statutes for the rule under 2-4-305, MCA, as outlined in the department's general statement of reasonable necessity.

42.15.319 DATE AND PLACE OF FILING AND PAYMENT (1) The due date for filing an individual income tax return and payment of the tax due is the 15th day of the ~~4th~~ fourth month following close of the tax year.

(2) A return may be filed by personal delivery, mail, and electronically.

~~(a) A return may be filed by personal delivery to:~~
~~Department of Revenue~~
~~3rd Floor, Sam W. Mitchell Building~~
~~125 North Roberts~~
~~Helena, Montana 59620;~~

~~(b) A return may be filed by mailing it postage prepaid by U.S. Postal Service First-Class or Priority mail to:~~
~~Department of Revenue~~
~~P.O. Box 5805~~

~~Helena, Montana 59604-5805~~

~~(i)~~ (a) ~~i~~If a return is mailed as provided in this ~~section~~ rule, on or before the due date, and received by the department, the return is considered filed on the date mailed. A taxpayer is responsible for establishing the date a return is mailed.

~~(c)~~ (b) The rules for filing a return electronically are located in ARM Title 42, chapter 5, subchapter 2.

(3) Every taxpayer must compute their tax liability and pay the balance of any tax due in full on or before the prescribed due date, as stated in 15-30-2602, MCA. If the balance due is less than $1, payment is not required. If full payment of the balance due is not made on or before the prescribed due date, interest and late payment penalty accrue from the prescribed due date of the return until paid, as provided in 15-1-216, MCA.

(a) If tax is paid by check or money order, the check or money order should be made payable to the "Montana Department of Revenue."

(b) The rules for paying a tax electronically are located in ARM Title 42, chapter 5, subchapter 2.

(c) The rules for paying a tax by credit card are located in ARM Title 42, chapter 5, subchapter 2.

AUTH: 15-30-2620, MCA
IMP: 15-30-2602, 15-30-2604, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.319 as outlined in the general statement of reasonable necessity relative to the removal of certain redundant physical address and website references in the department's administrative rules and to clarify rule provisions.

42.15.327 STATEMENT REQUIRED FOR ADJUSTMENT OF JOINT RETURN (1) The written request for an adjustment of the joint tax return referenced in ARM 42.15.326~~,~~ shall include a statement entitled "injured spouse statement." Before any adjustment can be considered, this statement must:

(a) contain the identical social security numbers of both spouses in the same order as they appear on the original joint tax return;

(b) clearly indicate how any income, itemized deductions, exemptions, credits, and tax payments (as originally claimed) should be divided between the spouses; and

(c) be signed by both spouses~~; and~~.

~~(d) be mailed to:~~

~~Department of Revenue~~

~~P.O. Box 5805~~

~~Helena, Montana 59604-5805.~~

(2) This statement, when ~~mailed~~ submitted to the department, does not relieve the obligated taxpayer of the responsibility for requesting a hearing, in writing, if the taxpayer wishes to contest the child support debt. This request must be made within 30 days after the notice of offset and opportunity for hearing is mailed to the taxpayer.

(3) The department will review the statement and the tax return, make the adjustment of the tax liability and refund, and will subsequently notify the taxpayer in writing of the final determination. If the taxpayer disagrees with the adjustment made

by the department, the taxpayer may request a ~~reconsideration~~ review of the adjustment pursuant to ARM 42.2.613 through 42.2.621.

AUTH: 15-1-201, 15-30-2620, 17-4-110, MCA
IMP: 15-1-211, 15-30-2609, 17-4-105, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.327 as outlined in the general statement of reasonable necessity relative to the removal of certain redundant physical address and website references in the department's administrative rules and to clarify rule provisions.

42.15.328 FORM OF CLAIM FOR REFUND (1) A claim for refund may be in the form of an amended return, a formal claim, or any written instrument signed by the taxpayer, ~~clearly stating~~ which states the facts concerning payment of the tax and the grounds upon which the claim or refund is based. Any claim based on changes to income or deductions must be on an amended return. ~~If the claim is not made on an amended return form, it must be mailed to:~~

~~DEPARTMENT OF Revenue~~
~~P.O. Box 5805~~
~~Helena, MT 59604-5805.~~

AUTH: 15-30-2620, MCA
IMP: 15-30-2609, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.328 as outlined in the general statement of reasonable necessity relative to the removal of certain redundant physical address and website references in the department's administrative rules and to clarify rule provisions.

42.15.415 (42.15.223) DEDUCTIONS FOR SALE OF LAND TO A BEGINNING FARMER (1) A deduction from ~~adjusted gross~~ federal taxable income is allowed for each sale of 80 acres or more if approved by the agricultural loan authority. The deduction is the amount which would have to be included in ~~adjusted gross~~ federal taxable income as ordinary income and the taxable portion of capital gains resulting from the sale, up to a maximum deduction of $50,000. The deduction will be taken each year a payment is received until the loan is repaid or the deductions for all years equal $50,000.

(2) The taxpayer may claim more than one deduction as a result of sales to beginning farmers provided each sale is approved by the agricultural loan authority.

(3) To the extent that a net operating loss is created as a result of this deduction, such loss shall not be available for carryover or carryback provisions.

(4) Individuals in a partnership that makes an approved sale are also allowed this deduction. The partners' distributive shares of profit may be reduced by the amount of the allowable deductions. However, in no case shall the total deduction for all partners exceed $50,000 for each sale.

~~(5)~~ Shareholders of an electing small business corporation are not allowed a deduction on their individual tax returns for approved sales made by the corporation. The deduction must be taken by the corporation.

~~(6)~~ (5) For tax deduction purposes, a copy of the approval of the transaction by the agricultural loan authority must be attached to the return claiming the deduction. The department may also require additional documentation on request to establish the eligibility of the transaction for a tax deduction.

AUTH: 15-1-201, MCA
IMP: 80-12-211, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.415 and transfer it to ARM 42.15.223 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update income references from adjusted gross to federal taxable income. The department also proposes a general amendment to combine (4) and (5) to clarify rule provisions regarding sale of property owned by business entities, which are unnecessarily separated in the current version of the rule.

42.15.602 MEDICAL CARE SAVINGS ACCOUNT REPORTING AND PAYMENTS (1) A Montana medical care savings account (MSA) is subject to the following requirements:

(a) The MSA must have a unique account holder who is an individual and a resident of Montana. A jointly held account does not qualify. Regardless of income tax filing status, married taxpayers must each open an account to register as an account holder to be eligible to reduce their federal ~~adjusted gross~~ taxable income by the amount of their allowable contributions.

(b) Annual interest or income earned in a Montana MSA is excluded from ~~Montana adjusted gross~~ federal taxable income as long as it remains as a deposit in the account, is withdrawn from the account to pay for eligible medical expenses, is distributed to an immediate family member as provided in 15-61-202, MCA, or is used for paying the expenses of administering the account. Year-end interest or other income reports provided to the taxing authorities and the account holder must be provided in such a manner that the interest or other income earned on the Montana MSA can be separately identified in order to remain exempt.

(c) A taxpayer who used a loss in the value of the investment contained in the MSA as a reduction of their federal ~~adjusted gross~~ taxable income, must add this loss back to the federal ~~adjusted gross~~ taxable income for the determination of the Montana taxable income.

(d) ~~Beginning January 1, 2018, an account holder cannot contribute in excess of the contribution limit stated in 15-61-202, MCA. During the 2018 calendar year only, any contribution made before January 1, 2018, in excess of the principal, which is the sum of contributions deducted from adjusted gross income in all preceding tax years, can be used as deductible contribution, as eligible expenses, or withdrawn free of tax and penalties. After December 31, 2018, an account holder cannot exclude from adjusted gross income any contribution in excess of the~~

~~principal remaining in the MSA, and all unqualified withdrawals must be taxed as ordinary income and subject to the penalty as provided in 15-61-203, MCA.~~

~~(e)~~ Before receiving any exempted transfer of funds from a Montana MSA of an immediate family member, a transferee must establish his or her own account, provided he or she is eligible to be an account holder of a Montana MSA.

(2) Every account holder of a self-administered account, or account administrator, is required to annually submit the following information regarding each MSA:

(a) name of the account holder;

(b) address of the account holder;

(c) taxpayer identification number of the account holder;

(d) starting and ending balances of the account;

(e) contributions made during the tax year by the account holder;

(f) amount of withdrawals made during the tax year by the account holder;

(g) dates of any withdrawals;

(h) interest or other income earned on the principal of the MSA; and

(i) amount of penalties withheld and remitted.

(3) Each individual account holder of a self-administered account must file the information required in (2) on forms provided by or authorized by the department and be remitted with the individual income tax form for the corresponding tax year. The account holder must report the name and address where the account is established, and the account number, annually.

(4) On or before January 31, an account administrator, other than an account holder, must file the information required under (2) on forms provided by or authorized by the department.

(5) Account holders or account administrators who withhold penalties on unqualified withdrawals must submit the penalties to the department as follows:

(a) Account administrators must remit the penalties on or before January 31 of the following year to the department.

(b) Self-administered individual account holders must report and remit penalties with the individual income tax form for the corresponding tax year.

(6) Failure to remit any withheld penalties within the time provided is considered to be an unlawful conversion of trust money. Penalties provided in 15-1-216 ~~and 15-30-2641~~, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be withheld from ineligible withdrawals of the account holder.

AUTH: 15-1-201, 15-30-2620, MCA;
IMP: 15-61-202, 15-61-203, 15-61-204, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.602 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update income references from adjusted gross to federal taxable income. The department also proposes to amend (1)(d) to remove provisions that are out-of-date and no longer applicable, and remove the cross reference to 15-30-2641, MCA, in (6) as the statute was repealed by House Bill 72 (2019).

42.15.603 MEDICAL CARE SAVINGS ACCOUNT - WITHDRAWALS, PENALTIES, AND TRANSFERS (1) The funds held in a Montana medical care savings account (MSA) may be withdrawn by the account holder free of tax at any time during the year if they are qualified withdrawals.

(2) Except as provided in (7), qualified withdrawals include:

(a) eligible medical expenses, as defined in 15-61-102, MCA, paid during that year; or

(b) expenses incurred for administering the account.

(3) An unqualified withdrawal must be:

(a) included in the taxpayer's income tax return as ordinary income; and

(b) ~~is~~ subject to a penalty equal to ~~10~~ ten percent of the amount of the withdrawal from the account~~. An unqualified~~ unless the withdrawal is made on the last business day of the business year, as set forth in 15-61-203, MCA~~, is not subject to this penalty but shall be taxed as ordinary income as provided in (a)~~.

(4) Withdrawals that do not meet the following requirements and exceptions are deemed unqualified:

(a) Withdrawals must be made by the account holder of a self-administered account, or on behalf of an account holder, by January 15 for the purpose of reimbursing eligible medical expenses paid during the previous year.

(b) Each account holder must maintain documentation of eligible expenses for a minimum of three years from the date the account holder filed a Montana income tax return for the year the expenses were incurred.

(c) In the case of requests made by account holders from account administrators for withdrawals to pay for eligible medical expenses, the expenses must be supported by an itemized statement of expenses that were either paid or charged by the account holder and the signature of the account holder attesting that these expenses are "eligible medical expenses." The burden of proving that a withdrawal from an MSA was made for an eligible expense is upon the account holder and not upon the account administrator.

(d) All payments made from an MSA must be made payable to the account holder, the eligible medical provider, the estate, or the legal guardian of the account holder, unless an agreement exists between the account holder and/or the account administrator and the payee to pay eligible medical expenses electronically.

(5) An account holder who becomes a resident of another state is deemed to have made an unqualified withdrawal for the entire value of the balance contained in the account on the date the individual changed residency. The withdrawal is deemed to have been made on the last business day of the taxpayer's Montana residency, and is not subject to the ~~10~~ ten percent penalty provided in 15-61-206, MCA.

(6) The direct transfer of funds from a Montana MSA of an account holder to another Montana MSA is deemed an unqualified withdrawal to the transferor and ordinary income to the transferee, to the extent it is includable in the transferee's federal gross income, except when the funds are directly transferred to:

(a) another Montana MSA of the same account holder established to replace the initial one or with a different account administrator; or

(b) a Montana MSA held by an immediate family member of the account holder, to the extent it is not includable in the transferee's federal gross income.

(7) After the death of the account holder:

(a) any distribution or withdrawal of funds from the Montana MSA is deemed an unqualified withdrawal unless:

(i) the funds are distributed as an inherited account; or

(ii) the withdrawals are made during the 365 days following the death of the account owner, either by the estate of the deceased on an existing account, or by any account holder of an inherited account to pay for eligible expenses incurred by the deceased;

(b) inherited accounts are deductible from ~~Montana adjusted gross income~~ federal taxable income to the extent they are included in the federal ~~adjusted gross~~ taxable income; and

(c) the ~~10~~ ten percent penalty for unqualified withdrawals does not apply to any distribution of funds to the heirs of the deceased whether or not the funds received qualify as an inherited account.

(8) Qualified withdrawals made with respect to a family leave expense, as defined in 15-61-102, MCA, are deemed to be in exchange of adequate consideration for loss of income and must be treated as ordinary income to the recipient, except when received by the account holder or the spouse of the account holder.

(9) All medical records and expenses provided by an account holder to an account administrator are to be kept confidential by the account administrator unless the account holder gives authorization to disclose them to a third party.

AUTH: 15-1-201, 15-30-2620, MCA
IMP: 15-61-102, 15-61-202, 15-61-203, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.603 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income, and to clarify rule provisions. The department also proposes formatting amendments to stated percentages for uniformity with other department rules and the Secretary of State's style guide adopted for administrative rules.

42.15.802 CONTRIBUTIONS TO FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) The program administrator determines who can be an account owner and from whom it will accept contributions to an account. Account ownership and the acceptance of contributions are not related to the ability of the contributor to reduce Montana taxable income. Entitlement to the deduction depends on meeting specific statutory requirements set forth in Title 15, chapter 62, MCA, and these rules.

(2) An individual, including a nonresident, may reduce their ~~Montana adjusted gross~~ federal taxable income by the lesser of the total contributions they actually make to one or more accounts as provided in ~~15-30-2110~~ 15-30-2120 and 15-62-207, MCA, during the tax year, or $3,000.

(3) A rollover from one account to another or from one program to another state program is not a contribution for which a deduction may be claimed.

(4) For Montana tax purposes, deductible contributions to an account do not include the earnings on the account.

AUTH: 15-30-2620, MCA
IMP: ~~15-30-2110~~ 15-30-2120, 15-62-201, 15-62-207, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.802 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income, and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.803 WITHDRAWALS FROM FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS AND RECAPTURE TAX (1) Penalties assessed for nonqualified withdrawals are not deductible in arriving at Montana taxable income.

(2) A rollover from one account to another or to an ABLE account is allowed under the same terms described under IRC 529. However, if the funds are rolled over to an account owned by an individual who is not a resident of Montana, then the amount rolled over is a recapturable withdrawal, which is defined in 15-62-208, MCA.

(3) A recapture tax at a rate equal to the highest rate of tax provided in 15-30-2103, MCA, is imposed on the recapturable withdrawal of contributions to a family education savings account deducted by the contributor. Except as provided in (10), the recapture tax is payable by the owner of the account from which the withdrawal was made even if the account owner did not make the deductible contribution. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(4) An account owner who is subject to the recapture tax must report the tax on the tax return for the taxable year of the withdrawal and must pay the tax at the time the income tax for such year is due.

(5) The portion of a recapturable withdrawal that is not treated as the withdrawal of earnings shall be treated as:

(a) first, out of nondeductible contributions not previously withdrawn; and

(b) second, out of deductible contributions not previously withdrawn.

(6) The portion of any other withdrawal that is not treated as the withdrawal of earnings shall be treated as:

(a) first, out of deductible contributions not previously withdrawn; and

(b) second, out of nondeductible contributions not previously withdrawn.

(7) The taxpayer shall have the burden of sustaining a claim that all or a portion of the contributions withdrawn were not attributable to deductible contributions. There shall be a presumption that a recapturable withdrawal is a withdrawal of deductible contributions.

(8) A recapturable withdrawal of amounts that previously reduced Montana ~~adjusted gross~~ taxable income under ~~15-30-2110(11)~~ 15-30-2120(3)(e), MCA, is Montana source income pursuant to 15-30-2101(18)(a)(xvi), MCA.

(9) Nonresidents are subject to the recapture tax under ARM 42.15.803 and 42.15.804.

(10) If the account is established under the Montana Uniform Transfers to Minors Act, and the minor is not yet 21 years of age, the custodian of that account is subject to any recapture tax on a recapturable withdrawal.

AUTH: 15-30-2620, 15-62-201, MCA
IMP: ~~15-30-2110~~ 15-30-2120, 15-62-201, 15-62-208, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.803 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income, and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.804 VERIFICATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT CONTRIBUTIONS AND WITHDRAWALS (1) Each program manager shall submit a report to the department via the state of Montana's secure file transfer service (or functional equivalent), by February 28 following the close of the preceding tax year which identifies all contributions and withdrawals for family education savings accounts for which the account owner is, or was at the time the account was opened, a Montana resident. The report must be submitted in an electronic format sortable by the following information for each contributor, designated beneficiary, account owner, and distributee:

(a) full name;

(b) last reported address;

(c) social security number;

(d) amount of the contributions;

(e) amount of the withdrawals (and to the extent that the Internal Revenue Service requires such information with respect to withdrawals, the portion constituting contributions and the portion constituting earnings); and

(f) in the case of the account owner, a notation as to whether the distribution is an early or nonqualified withdrawal.

(2) At the request of the department, a program manager shall provide complete copies of any other reports about accounts that it provides to either the Internal Revenue Service or the Montana Board of Regents.

(3) A program manager shall report a withdrawal as an early withdrawal if the withdrawal is made within one year of the date that the account was opened.

(4) A program manager shall withhold the recapture tax from any recapturable withdrawal from an account that was at any time owned by a resident of Montana but that at the time of the withdrawal is not owned by a person who is a resident of Montana. For purposes of this provision, the program manager shall assume that the account owner's address is the last address that the account owner reported to the program manager.

(5) Any recapture tax that is withheld shall be paid to the department not later than the last day of the month following the month in which such withholding

occurred. A program manager shall have no liability to the department for failure to withhold recapture tax if such error was made in good faith.

(6) A taxpayer who makes a recapturable withdrawal, for which withholding would be required, may petition the department in writing to determine the amount of the recapture tax. The petition shall include all facts relevant to the proposed withdrawal, including information about the account and other accounts owned by the taxpayer and evidence to show that all or a portion of the contributions are not attributable to previously deducted contributions. If the department is satisfied with the evidence, it shall issue a letter determining the recapture tax to be withheld by the program manager.

(7) Nothing in statute or rule prevents the department from directly contacting the contributor, designated beneficiary, account owner, or distributee for the reporting information described herein.

AUTH: 15-30-2620, 15-62-201, MCA
IMP: ~~15-30-2110~~ 15-30-2120, 15-62-201, 15-62-208, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.804 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.805 DEFINITIONS In addition to the terms defined in 15-62-103, MCA, the following definitions also apply to terms used in this subchapter:

(1) "Act" means the Family Education Savings Act, as referenced in 15-62-101, MCA.

(2) "Child" means a son, stepson, daughter, stepdaughter, or legally adopted son or daughter of the taxpayer.

(3) "Distributee" means the account owner or designated beneficiary who withdraws the funds. If the account is established under the Montana Uniform Transfers to Minors Act, and the minor is not yet 21 years of age, the distributee is the custodian of that account.

(4) "Program" means the family education savings program established pursuant to the Act, or any other program established and maintained under another state that qualifies as a qualified tuition program under IRC 529.

(5) "Program manager" means a financial institution selected pursuant to 15-62-203, MCA.

AUTH: 15-30-2620, 15-62-201, MCA
IMP: ~~15-30-2110~~ 15-30-2120, 15-62-103, 15-62-201, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.805 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.806 TAXATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT EARNINGS (1) Earnings on family education savings program accounts are not included in Montana ~~adjusted gross~~ taxable income when earned. The earnings will be included in Montana ~~adjusted gross~~ taxable income when distributed to the extent they are not used to pay for qualified education expenses.

AUTH: 15-30-2620, 15-62-201, MCA
IMP: ~~15-30-2110~~ 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.806 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income, and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.807 EFFECTIVE DATE OF CONTRIBUTION FOR TAX PURPOSES (1) For purposes of determining whether a contribution should be considered for one tax year or another, the date of mailing will be determinative. A certificate of mailing issued by the post office will be evidence of the date of mailing.

AUTH: 15-30-2620, 15-62-201, MCA
IMP: ~~15-30-2110~~ 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.807 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.906 TAX EXEMPTION FOR FIRST-TIME HOME BUYER (1) An account holder who remains a "first-time home buyer" ~~may deposit~~ and who contributed prior to January 1, 2024, into an account more than the maximum exclusion allowed under 15-63-202, MCA, in any ~~given~~ tax year prior to 2024 ~~and~~ may exclude from subsequent years any amounts previously deposited and not deducted as principal in a prior year.

(2) Once an individual purchases a single-family residence, the individual no longer is considered an account holder and a first-time home buyer. In subsequent years, the individual is not entitled to exclude amounts deposited into a first-time home buyer savings account or amounts previously deposited but not yet excluded from the account holder's ~~adjusted gross~~ federal taxable income.

(3) Interest or other income earned on the principal is excluded from ~~Montana adjusted gross~~ federal taxable income. Interest on other income on excess contributions, which have not yet been classified as principal, is not exempt in the years the interest or other income is earned.

(4) The amounts deposited into a first-time home buyer savings account is not considered principal until the year it is excluded from ~~adjusted gross~~ federal taxable income pursuant to ~~15-30-2110~~ 15-30-2120, MCA. For example, if a single individual who has never owned a home ~~transfers~~ transferred $15,000 from an

existing savings account into a first-time home buyer account in year one and purchases a qualifying home at the end of December in year three, the effect on their Montana returns will be as follows:

(a) For year one, the individual reduces their state income by $3,000 plus $90 in interest earned on the $3,000 principal only ($90 at the rate of ~~3%~~ three percent of the $3,000 principal). The remaining interest ($360 at the rate of ~~3%~~ three percent of the $12,000 carryover amount) is taxable in year one.

(b) In year two, the single individual is allowed a $3,000 carryover reduction plus interest earned on $6,090 ($183 at the rate of ~~3%~~ three percent of the $6,000 principal) for a total of $3,183 reduction on the state income tax return. The remaining interest ($281 at the rate of ~~3%~~ three percent of the $9,360 carryover amount) is taxable in year two.

(c) At the end of December in year three, the single individual buys a qualifying home. The individual is permitted the $3,000 carryover reduction on the Montana income tax for year three plus interest earned to the date of purchase ($278 at the rate of ~~3%~~ three percent on $9,273) for a total of $9,551. The taxpayer must spend at least $9,551 for eligible first-time home buyer expenses. The amount includes $9,000 that qualifies for the reduction ($3,000 for year one; $3,000 for year two; $3,000 for year three) plus the tax deferred interest for $551 earned during year one, year two, and year three.

(d) Once the taxpayer purchases the home, the taxpayer can no longer claim the carryover reduction for the portion of the $15,000 ($6,000 plus interest) that the taxpayer did not claim as a reduction in prior years.

AUTH: 15-1-201, MCA
IMP: 15-63-203, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.906 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income. The department also proposes to amend the format of the percentages in the rule for internal consistency with other department rules and for conformity with the style guide adopted by the Secretary of State for administrative rules.

42.15.1002 DEDUCTION FOR CONTRIBUTIONS TO AN ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT (1) In addition to the individuals listed in ~~15-30-2110(12)~~ 15-30-2120(6), MCA, the following contributors identified in 53-25-117, MCA, are also allowed a deduction from Montana ~~adjusted gross~~ taxable income for a contribution made to an ABLE account:

(a) the designated beneficiary;

(b) the spouse of the designated beneficiary; or

(c) a parent, grandparent, sibling, or child related to the designated beneficiary by blood, marriage, or legal adoption.

(2) The deduction provided under ~~15-30-2110(12)~~ 15-30-2120(6), MCA, for contributions to an ABLE account is available to resident and nonresident individuals. If a nonresident individual contributes to an account, the deduction is

only allowed if the designated beneficiary is the nonresident's child or stepchild and is also a Montana resident.

(3) A contributor must provide a written report to the designated beneficiary or agent, by the end of the tax year in which the contribution is made to an ABLE account, detailing the amount of the contributions that will reduce Montana taxable ~~adjusted gross~~ income for that tax year.

AUTH: 15-1-201, 15-30-2620, 53-25-118, MCA
IMP: ~~15-30-2110~~ 15-30-2120, 53-25-104, 53-25-117, 53-25-118, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.1002 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income, and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.1003 ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT RECAPTURE TAX (1) There is a recapture tax, payable by a designated beneficiary, regardless of residency status, on recapturable withdrawals from an ABLE account. Recapturable withdrawals and the amount of the recapture tax are provided in 53-25-118, MCA.

(2) A recapturable withdrawal of amounts that previously reduced a contributor's Montana taxable ~~adjusted gross~~ income under ~~15-30-2110(12)~~ 15-30-2120(6), MCA, is Montana source income to the designated beneficiary in the year of the recapturable withdrawal, as described in 15-30-2101(18)(a)(xvi), MCA.

(3) The recapture tax must be determined and withheld by the designated beneficiary or agent and reported to the department based on the recapturable withdrawal that occurred and the report detailing the contributions as required in ARM 42.15.1002(3). The designated beneficiary or agent must maintain records showing the reported contributions and withdrawals.

(4) The agent shall withhold and remit the recapture tax on a Montana individual income tax return for the tax year of the withdrawal if the recapturable withdrawal occurred from an account for which the designated beneficiary is no longer a resident of Montana.

AUTH: 15-1-201, 15-30-2620, 53-25-118, MCA
IMP: 15-30-2103, ~~15-30-2110~~ 15-30-2120, 53-25-118, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.1003 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.1004 VERIFICATION OF ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT CONTRIBUTIONS AND WITHDRAWALS (1) Each program manager shall submit a report to the department via the state of Montana's secure file transfer service (or functional equivalent), by February 28 following the close of

the preceding tax year which identifies all contributions and withdrawals for ABLE accounts of Montana resident designated beneficiaries. The report must also include contributions made to accounts of designated beneficiaries who were residents at the time the account was opened.

(2) The report must be in an electronic format sortable by the following contributor and designated beneficiary information:

(a) full name;

(b) last reported address;

(c) social security number;

(d) amount of the contributions;

(e) amount of the withdrawals (and to the extent that the Internal Revenue Service requires such information with respect to withdrawals, the portion constituting contributions and the portion constituting earnings); and

(f) a notation as to whether a distribution is a recapturable withdrawal, and if the withdrawal is made in violation of IRC 592A, when applicable.

(3) At the request of the department, a program manager shall provide complete copies of any other reports about accounts that it provides to either the Internal Revenue Service or to the Montana Department of Public Health and Human Services.

(4) Nothing in statute or rule prevents the department from directly contacting the contributor, designated beneficiary, or agent for the reporting information described herein.

AUTH: 15-1-201, 15-30-2620, 53-25-118, MCA
IMP: ~~15-30-2110~~ 15-30-2120, 53-25-118, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.1004 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

6. The department proposes to repeal the following rules:

42.15.205 REFUNDS OF FEDERAL INCOME TAX

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, 15-30-2131, MCA

42.15.206 ADDITIONS AND SUBTRACTIONS FOR MARRIED TAXPAYERS FILING SEPARATE RETURNS

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.15.213 SMALL BUSINESS CORPORATION DIVIDEND AND CAPITAL GAIN EXCLUSION

AUTH: 15-33-105, MCA
IMP: 15-33-106, MCA

42.15.215 SENIOR INTEREST INCOME EXCLUSION

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.15.217 DISABILITY INCOME EXCLUSION

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.15.218 CAPITAL GAIN EXCLUSION FOR PRE-1987 SALES

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, 15-30-2111, MCA

42.15.219 PENSION AND ANNUITY INCOME EXCLUSION

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.15.221 DEPENDENT CHILD UNEARNED INCOME EXCLUSION

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.15.222 RAILROAD RETIREMENT AND SOCIAL SECURITY BENEFIT EXCLUSION

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.15.312 ACCEPTANCE OF REPRODUCED TAX FORMS

AUTH: 15-30-2620, MCA
IMP: 15-30-2604, MCA

42.15.318 MONTANA NET OPERATING LOSSES

AUTH: 15-30-2620, MCA
IMP: 15-30-2119, MCA

42.15.321 JOINT RETURNS

AUTH: 15-30-2620, MCA

IMP: 15-30-2602, MCA

42.15.322 SEPARATE RETURNS FOR MARRIED TAXPAYERS

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, 15-30-2602, MCA

42.15.401 DEFINITIONS

AUTH: 15-30-2620, MCA
IMP: 15-30-2114, 15-30-2115, 15-61-201, MCA

42.15.402 PERSONAL EXEMPTIONS

AUTH: 15-30-2620, MCA
IMP: 15-30-2114, MCA

42.15.403 EXEMPTIONS FOR DEPENDENTS

AUTH: 15-30-2620, MCA
IMP: 15-30-2114, 15-30-2115, 15-30-2116, MCA

42.15.427 DEDUCTION FOR HOUSEHOLD AND DEPENDENT CARE EXPENSES

AUTH: 15-30-2620, MCA
IMP: 15-30-2131, MCA

42.15.510 DEFINITIONS

AUTH: 15-30-2620, MCA
IMP: 15-30-2101, 15-30-2119, MCA

42.15.523 STANDARD DEDUCTION

AUTH: 15-30-2620, MCA
IMP: 15-30-2132, MCA

42.15.524 ITEMIZED DEDUCTIONS OF MARRIED TAXPAYERS

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, 15-30-2131, MCA

42.15.525 MONTANA ADJUSTED GROSS INCOME TO BE USED WHEN CALCULATING ITEMIZED DEDUCTIONS

AUTH: 15-30-2620, MCA

IMP: 15-30-2131, MCA

42.15.526 SMALL BUSINESS LIABILITY FUNDS

AUTH: 15-30-2620, 15-31-501, MCA
IMP: 15-30-2118, 15-30-2141, 15-31-117, 15-31-118, MCA

42.15.527 DEDUCTION PROVIDED UNDER INTERNAL REVENUE CODE SECTION 199A NOT ALLOWED

AUTH: 15-1-201, 15-30-2620, MCA
IMP: 15-30-2131, 15-30-2620, MCA

42.15.902 FIRST-TIME HOME BUYER ACCOUNT ADMINISTRATOR REGISTRATION

AUTH: 15-1-201, MCA
IMP: 15-63-102, 15-63-204, MCA

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 30, 2024.

8. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 7 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

10. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at rules.mt.gov.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors of SB 104, SB 399, HB 221, and HB 447 were contacted by electronic mail on October 16, 2024, and on November 12, 2024.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson	/s/ Scott Mendenhall
Todd Olson	Scott Mendenhall
Rule Reviewer	Deputy Director of Revenue

Certified to the Secretary of State November 12, 2024.

BEFORE THE OFFICE OF THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.11.701 through 44.11.711 and ARM 44.12.204 pertaining to continuing service accounts and the payment threshold--inflation adjustment for lobbyists	))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Political Practices proposes to amend the above-stated rules.

2. The Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Commissioner of Political Practices no later than 5:00 p.m. on December 12, 2024, to advise us of the nature of the accommodation that you need. Please contact Scott Cook, Office of the Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov.

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

44.11.701 DEFINITIONS For the purposes of Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and this subchapter:

(1) through (3) remain the same.

(4) ~~"Constituent services account"~~ "Continuing service account" means an account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter.

(5) and (6) remain the same.

(7) "Leaves public office" means that an eligible elected official ceases to occupy the public office for which a ~~constituent services account~~ continuing service account has been established. The term does not include an eligible elected official who is re-elected to the same public office.

(8) remains the same.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

44.11.702 DISPOSAL OF SURPLUS CAMPAIGN FUNDS AND PROPERTY

(1) through (5) remain the same.

(6) A candidate or eligible elected official shall abide by the prohibitions on the use of surplus campaign funds specified in 13-37-240~~,~~ and 13-37-402, MCA, ARM 44.11.703, the provisions of this rule, and the rules in this chapter.

(a) through (c) remain the same.

(d) Surplus campaign funds, including surplus campaign funds deposited in a ~~constituent services account~~ continuing service account and any interest accrued as provided in ARM 44.11.710, may only be disbursed as follows:

(i) through (iii) remain the same.

(iv) an eligible elected official may transfer the funds to a ~~constituent services account~~ continuing service account provided for in Title 13, chapter 37, part 4, MCA, and the rules in this chapter;

(v) through (8) remain the same.

AUTH: 13-37-114, MCA
IMP: 13-37-220, 13-37-240, 13-37-402, MCA

44.11.703 PERSONAL BENEFIT (1) Pursuant to 13-37-240, MCA, the term "direct or indirect benefit" means the distribution of all or any portion of surplus campaign funds, including surplus campaign funds deposited in a ~~constituent services account~~ continuing service account, that benefit a candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family, except as specifically authorized by this rule or the rules in this chapter.

(2) Surplus campaign funds or ~~constituent services account~~ continuing service account funds may be donated to a group of individuals or an organization to which the candidate or an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family belongs or is a member, as long as:

(a) the candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family do not control how the group or organization spends the surplus campaign funds or ~~constituent services account~~ continuing service account funds received by the group or organization;

(b) the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the group or organization to spend the surplus campaign funds or ~~constituent services account~~ continuing service account funds received by the organization; and

(c) remains the same.

(3) Surplus campaign funds or ~~constituent services account~~ continuing service account funds may be donated to a government entity under ARM 44.11.702, even if the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family is an employee of the government entity or serves on the government entity's policy making or advisory board, as long as:

(a) the candidate, an eligible elected official, or a member of a candidate's or an eligible elected official's immediate family does not control how the government entity spends the surplus campaign funds or ~~constituent services account~~ continuing service account funds received;

(b) the candidate, an eligible elected official, or a member of the candidate's or an eligible elected official's immediate family abstains from voting on or taking any action to approve or disapprove a decision by the government entity to spend the surplus campaign funds or ~~constituent services account~~ continuing service account funds received; and

(c) remains the same.

AUTH: 13-37-114, MCA
IMP: 13-37-240, MCA

44.11.704 APPLICABILITY OF RULES (1) All of the rules in this chapter apply to a ~~constituent services account~~ continuing service account established by an eligible elected official under Title 13, chapter 37, part 4, MCA, and 13-37-240, MCA, on or after May 14, 2007.

(2) and (3) remain the same.

(4) The following provisions of Montana law may also apply to the use or expenditure of surplus campaign funds, ~~constituent account~~ continuing service account funds, or other funds deposited in or expended from accounts related to an elected official's public office:

(a) through (d) remain the same.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

44.11.705 ELIGIBLE ELECTED OFFICIALS (1) An individual elected to any of the following public offices may transfer surplus campaign funds to a ~~constituent services account~~ continuing service account created under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter:

(a) through (j) remain the same.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

44.11.706 PROHIBITIONS (1) The following prohibitions apply to a ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, ARM 44.11.702 and 44.11.703, and the rules in this chapter:

(a) remains the same.

(b) Only surplus campaign funds as defined in ARM 44.11.702 may be deposited in a ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA, and the rules in this chapter, except for the payment of interest as provided in ARM 44.11.710. An eligible elected official may not:

(i) deposit funds from a pre-existing account or any other account related to the eligible elected official's public office into a ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA;

(ii) solicit or receive cash or anything of monetary value for deposit in a ~~constituent services account~~ continuing service account or to provide constituent services; or

(iii) remains the same.

(c) A ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA, may only be used to provide constituent services.

(d) ~~Constituent services account~~ Continuing service account funds may not be used for personal benefit as specified in 13-37-240 and 13-37-402, MCA, ARM 44.11.702, and 44.11.703, and the rules in this chapter. ~~Constituent services account~~ Continuing service account funds may not be used to pay compensation to an eligible elected official or a member of an eligible elected official's immediate family except as expressly provided in the rules in this chapter.

~~(e) Expenditures cannot be made from a constituent services account if the eligible elected official has an open campaign account for any elective office, including an elective office other than the office currently held. However, constituent services account funds may be used to pay for constituent services provided or expenses incurred to provide constituent services before the date upon which a campaign account was opened if payments for such services or expenses are supported by written documentation as provided in ARM 44.11.709.~~

~~(f)~~(e) ~~Constituent services account~~ Continuing service account funds may not be contributed to another ballot issue or candidate campaign, including the eligible elected official's own future campaign.

(2) Subsections (1)(d) and ~~(1)(f)~~(e) apply to:

(a) and (b) remain the same.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

44.11.707 AUTHORIZED EXPENDITURES (1) A ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be used to pay for the following expenses incurred to provide constituent services:

(a) through (h) remain the same.

(2) ~~Constituent services account~~ Continuing service account funds may be used to pay travel, meal, and lodging expenses subject to the following:

(a) through (c) remain the same.

(3) If ~~constituent services account~~ continuing service account funds are used to purchase office space, equipment, or supplies, the office space, equipment, or supplies purchased with ~~constituent account~~ continuing service account funds must be used exclusively to provide constituent services. When an eligible elected official leaves public office, any office space, equipment, or unused supplies purchased with ~~constituent account~~ continuing service account funds must be disbursed as provided in ARM 44.11.702.

(4) If ~~constituent services account~~ continuing service account funds are used to reimburse an eligible elected official or a person, other than a member of an eligible elected official's immediate family, for office space, equipment, or supplies

used, in whole or in part, to provide constituent services, all reimbursement payments and the basis for such payments must be documented in writing as provided in ARM 44.11.709. Any reimbursement for office space, equipment, or supplies must be based on the fair market value of the office space, equipment, and supplies used to provide constituent services.

(5) Nothing in this rule authorizes ~~constituent services account~~ continuing service account funds to be used or expended in violation of the prohibitions in ARM 44.11.702, 44.11.703, and 44.11.706, 13-37-240, MCA, or Title 13, chapter 37, part 4, MCA.

(6) ~~Constituent services account~~ Continuing service account funds may not be used to pay:

(a) through (f) remain the same;

(g) the cost of entertaining constituents or any other individual or person. However, nothing in this subsection prohibits an eligible elected official from using ~~constituent services account~~ continuing service account funds to pay for food or drink provided at a publicly announced or publicly advertised meeting held for the general purpose of allowing constituents to participate in a public discussion of matters of interest to the constituents or an eligible elected official. The expenditures for food and drink at such a meeting must not be lavish or extravagant; and

(h) remains the same.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

44.11.708 OPENING AN ACCOUNT (1) An eligible elected official may establish a ~~constituent services account~~ continuing service account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, by filing a completed ~~constituent services account~~ continuing service account form provided by the commissioner. The form shall require an eligible elected official to disclose and provide, as a minimum, the following:

(a) the name and elective office held by the eligible elected official establishing the ~~constituent services account~~ continuing service account;

(b) remains the same;

(c) the full name, mailing address, and telephone number that appears on the ~~constituent services account~~ continuing service account;

(d) remains the same;

(e) the full name, mailing address, and telephone number that appears on the campaign account from which surplus campaign funds are being transferred for deposit in the ~~constituent services account~~ continuing service account;

(f) the full name, mailing address, and telephone number of the financial institution at which the ~~constituent services account~~ continuing service account has been established;

(g) a copy of the closing report for the campaign account from which surplus campaign funds are being transferred for deposit in the ~~constituent services account~~ continuing service account;

(h) the amount of surplus campaign funds being deposited in the ~~constituent services account~~ continuing service account;

(i) if all of the surplus campaign funds in the closed campaign account will not be deposited in the eligible elected official's ~~constituent services account~~ continuing service account, the full name and mailing address of each contributor or entity receiving any portion of the surplus campaign funds pursuant to ARM 44.11.702; and

(j) and (2) remain the same.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

44.11.709 RECORDS AND REPORTING (1) An eligible elected official who establishes a ~~constituent services account~~ continuing service account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, must file quarterly reports with the commissioner's office after an account is opened. Reports must be filed on or before April 10, July 10, October 10, and January 10 in each calendar year until the account is closed as provided in ARM 44.11.711. A report must be filed even if no expenditures have been made during the reporting period. The reports must include all expenditures made and interest accrued through the end of the calendar quarter on which the quarterly report is due.

(2) and (3) remain the same.

(4) An eligible elected official must maintain the following additional written documentation for each expenditure from a ~~constituent services account~~ continuing service account:

(a) through (e) remain the same.

(5) An eligible elected official may establish only one ~~constituent services account~~ continuing service account and no secondary depositories or subaccounts may be established. An eligible elected official may only have one ~~constituent services account~~ continuing service account open at a time.~~, and while a campaign account is open no expenditures shall be made from the constituent services account established pursuant to 13-37-401 and 13-37-402, MCA.~~

(6) All records and reports that must be filed or maintained under the rules in this chapter must be retained by the eligible elected official for a period of ~~four~~ two years after the ~~constituent services account~~ continuing service account is closed.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

44.11.710 INTEREST PAID ON ACCOUNTS (1) Interest paid on a ~~constituent services account~~ continuing service account established under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, may be received and used to provide constituent services if:

(a) the interest is deposited directly into the ~~constituent services account~~ continuing service account;

(b) and (c) remain the same.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

44.11.711 CLOSING AN ACCOUNT – DISBURSEMENT OF SURPLUS ACCOUNT FUNDS (1) An eligible elected official must close a ~~constituent services account~~ continuing service account within 120 days after leaving public office as defined in ARM 44.11.701. The closing report must be filed on a form to be provided by the commissioner.

(2) A closing report must disclose the full name and mailing address of each contributor or entity receiving all or any portion of the funds in a ~~constituent services account~~ continuing service account pursuant to ARM 44.11.702. The closing report must also disclose the date on which the payment was made to each contributor or entity.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

REASON: The Commissioner of Political Practices is amending ARM 44.11.701 through 44.11.711 to reflect the changes made legislatively by the 2023 Montana Legislature pertaining to the name of continuing service accounts (via House Bill 493), allowing elected officials to make expenditures from an established account even when the official has an open campaign account (via House Bill 387), and to reflect a change in the amount of time candidates must preserve continuing service account records from four years to two years (via House Bill 947).

44.12.204 PAYMENT THRESHOLD--INFLATION ADJUSTMENT

(1) Pursuant to the operation specified in 5-7-112, MCA, the adjusted payment threshold for calendar years ~~2023 and 2024 is $2,900~~ 2025 and 2026 is $3,000.

AUTH: 5-7-111, MCA
IMP: 5-7-112, MCA

REASON: Section 5-7-112, MCA, requires the Commissioner of Political Practices, following the general election, to adjust the payment threshold amount for reporting of lobbying-related expenses based on application of an inflation factor specified in that statute. There is reasonable necessity for the amendment of the rule because 5-7-112, MCA, requires the Commissioner of Political Practices to publish the revised threshold as a rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Scott Cook, Office of the Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov, and must be received no later than 5:00 p.m., December 20, 2024.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Scott Cook at the above address no later than 5:00 p.m., December 20, 2024.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 38 persons based on the 380 lobbyists who registered to lobby in 2023-2024.

7. The commissioner maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Written requests may be mailed or delivered to the contact person in paragraph 4 or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available on the Commissioner of Political Practice's website at politicalpractices.mt.gov or through the Secretary of State's website at rules.mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the commissioner has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Scott Cook
Scott Cook
Rule Reviewer

/s/ Chris Gallus
Chris Gallus
Commissioner

Certified to the Secretary of State November 12, 2024.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and the repeal of ARM 44.14.106 pertaining to records and information management.	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On December 13, 2024, at 10:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., December 6, 2024, to advise us of the nature of the accommodation needed. Please contact Andy Ritter, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-7911; fax (406) 444-3976; TDD/Montana Relay Service 711; or email Andrew.Ritter@mt.gov.

3. The Secretary of State proposes to adopt the following rule:

NEW RULE I EXECUTIVE BRANCH AGENCY AUTHORITY FOR DISPOSAL OF PUBLIC RECORDS (1) Executive branch agencies must submit information regarding their records management program every five years on a form prescribed by the Secretary of State and State Records Committee to ensure the proper management and safeguarding of public records.

(2) Executive branch agencies must annually review state records management requirements and submit an acknowledgement form prescribed by the Secretary of State and adopted by the State Records Committee.

(3) Executive branch agencies administering the records management function established in 2-6-1103, MCA, may independently dispose of their public records without written approval of the State Records Retention and Disposition Subcommittee if the public records have met their retention period and fall within the approved state general retention schedules or an agency-specific retention schedule(s) approved by the State Records Retention and Disposition Subcommittee.

(a) Executive branch agencies must submit requests for disposal of public records for approval by the State Records Retention and Disposition Subcommittee if the records are not listed on an approved records retention schedule.

(b) An agency public record that is more than twenty-five years old may not be destroyed unless it is first offered to the Montana Historical Society and approved by the State Records Retention and Disposition Subcommittee.

AUTH: 2-6-1101, 2-6-1109, MCA
IMP: 2-6-1101, 2-6-1103, 2-6-1109, MCA

4. The Secretary of State proposes to repeal the following rule:

44.14.106 DELEGATION AUTHORITY FOR DISPOSAL OF PUBLIC RECORDS

AUTH: 2-6-1101, MCA
IMP: 2-6-1101, 2-6-1103, MCA

REASONABLE NECESSITY: The proposed repeal of ARM 44.14.106 and adoption of NEW RULE I will streamline current records management processes and create additional efficiencies for state agency records management. These changes remove duplicative processes related to the disposal request process and streamline the request and approval process for agency authority for disposal, which will provide for more effective management of agency records. Additionally, these changes will create various consistencies across all Montana government (municipal, county, and state) based on the statutory changes to the local government records committee disposition processes that passed during the 2023 Legislative Session.

5. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that the adoption of NEW RULE I and the repeal of ARM 44.14.106 will not have a fiscal impact.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., December 20, 2024.

7. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

8. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at https://sosmt.gov/arm/secretary-of-state-administrative-rules/ or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the adoption and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Austin Markus James
Austin Markus James
Rule Reviewer

/s/ Christi Jacobsen
Christi Jacobsen
Secretary of State

Dated this 12th day of November, 2024.

VOLUME NO. 60 OPINION NO. 1

JUDICIAL STANDARDS COMMISSION: §§ 3-1-1101 et seq.
OPEN MEETINGS LAWS: §§ 2-3-201 et seq.

HELD: When the Judicial Standards Committee ("JSC") exercises its rulemaking authority, it must do so in a public meeting and provide reasonable opportunity for the public to participate in the rulemaking process.

September 20, 2024

Jason Ellsworth
President
Montana Senate
P.O. Box 200500
Helena, MT 59620-0500

President Ellsworth:

[P1] You requested an Attorney General Opinion regarding the Judicial Standards Commission's ("JSC") rulemaking authority and process. In preparing this opinion, I considered the analysis in the legal memorandum accompanying your request and additional research on the topic.

[P2] By virtue of your office, you are entitled to request such an opinion pursuant to MCA § 2-15-501(7). Therefore, I have restated your questions presented[1] and provided short answers as follows[2]:

> **First Question Presented:** Whether the JSC's rulemaking authority is independent of the Montana Supreme Court's authority.
>
> **First Short Answer:** Yes. First, the JSC's rulemaking authority comes from the Constitution itself. And the Constitution excludes the Montana Supreme

[1] Questions one, two, and three from your memo have been combined into the first question presented. Questions four and five have been combined into the second question presented.

[2] An Attorney General Opinion may not be used to resolve questions of fact. MCA § 2-15-501(7). Your question three raises factual issues regarding the specific process used during the JSC rulemaking identified in Order AF 14-0356. Parts of your question three are, therefore, ill-suited for an Attorney General Opinion.

Court from exercising control over JSC rulemaking. Second, the Montana Supreme Court's general supervisory powers are limited to courts and the JSC is not a court.

Second Question Presented: Whether the JSC rulemaking process triggers constitutional or statutory requirements to conduct rulemaking in an open meeting.

Second Short Answer: Yes. The JSC is a governmental body under Montana's open meetings statutes. When the JSC exercises its authority to engage in rulemaking, it engages in a "meeting," which must occur in an open setting with sufficient notice to the public.

Judicial Standards Commission Background

[P3] The 1972 Constitution added a new Article VII, Section 11 "to allow citizens to bring complaints about judges to an independent commission to investigate and recommend retirement, removal or suspension of the judge in question to the supreme court." Proposed 1972 Constitution for the State of Montana, Official Text with Explanation, at 4. The Judicial Standards Commission's purpose is to "judge a judge." Vol. IV, Montana Constitutional Convention Verbatim Transcripts, at 1124 (Del. Blaylock).

[P4] The Constitutional Convention debated how best to protect the public from judges who need to retire while also protecting the judiciary from bad publicity. *Id.* at 1124–26. The Convention reached a compromise which reduced the number of judges on the Judicial Standards Commission from three to two and increased the number of laypersons from one to two. *Id.* at 1126. This compromise, adopted by voice vote, ensured the Judicial Standards Commission would not be subject to majority control of the judiciary.

[P5] Voters adopted two subsequent amendments to Article VII, Section 11 of the Montana Constitution. *See* CA-9 (1980) (adding current subsection (4)); CI-13 (1984) (allowing Commission to discipline judges based on violations of the canons of judicial ethics). Constitutional Amendment 9 prohibited "total secrecy" by the Commission. 1980 Voter Information Pamphlet, Montana Secretary of State, at 2. The amendment allowed "public scrutiny of the disciplining of judges" to insure confidence in our legal system." *Id.* In sum, "Constitutional Amendment 9 will permit the Legislature to specify when the Commission's proceedings will be open to public review." *Id.* at 3.

[P6] Since 1984, the constitutional text has remained unchanged:

> Section 11. Removal and discipline. (1) The legislature shall create a judicial standards commission consisting of five persons and provide

> for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.
>
> (2) The commission shall investigate complaints, and make rules implementing this section. It may subpoena witnesses and documents.
>
> (3) Upon recommendation of the commission, the supreme court may:
>
> (a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or
>
> (b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of canons of judicial ethics adopted by the supreme court of the state of Montana, or habitual intemperance.
>
> (4) The proceedings of the commission are confidential except as provided by statute.

Mont. Const. art. V, Section 11.

[P7] The Montana Constitution grants the Judicial Standards Commission rulemaking authority to govern the Commission's affairs. The Constitution provides the Montana Legislature power to limit the Commission's rulemaking authority in two places. Mont. Const. art. V, § 13(1); Mont. Const. art. VII, § 11(4); *State ex rel. Shea v. Judicial Standards Comm'n*, 198 Mont. 15, 33–34, 643 P.2d 210, 220 (1982). Subject to legislative direction, the Judicial Standards Commission's rulemaking authority is exclusive. *Harris v. Smartt*, 2002 MT 239, ¶ 121, 311 Mont. 507, 532, 57 P.3d 58, 74 ("*Harris I*") (Larson, J. specially concurring and dissenting).

[P8] The Judicial Standards Commission "shall investigate complaints, and make rules implementing this section." Mont. Const. art. VII, § 11(2). "The [Judicial Standards Commission] shall make rules for the conduct of its affairs and the enforcement of confidentiality and provide public disclosure when appropriate consistent with this part." Mont. Code Ann. § 3-1-1105(2).

I. The Judicial Standards Commission's rulemaking authority is independent from the Montana Supreme Court.

[P9] Whether the JSC can adopt rules independently from the Montana Supreme Court depends on: (1) the JSC's constitutional and statutory authority to enact rules; and (2) if the JSC is a court subject to the Montana Supreme Court's supervisory control.

A. The Montana Constitution grants the Judicial Standards Commission procedural rulemaking authority subject only to certain legislative conditions.

1. The JSC is an independent government body within the judicial branch.

[P10] "The Constitution defines the powers" of constitutionally created bodies and "a direct power conferred upon one necessarily excludes the existence of such power in the other." *Bd. of Regents of Higher Educ. of Mont. v. State*, 2022 MT 128, ¶ 19, 409 Mont. 96, 512 P.3d 748. "As a general rule, the express mention of a certain power or authority within a statute implies the exclusion of non-expressed powers." *Harris v. Smartt*, 2003 MT 135, ¶ 16, 316 Mont. 130, 68 P.3d 889 ("*Harris II*"). This rule applies equally to constitutional provisions. *Harris II*, ¶ 17.

[P11] The Montana Constitution provides for government bodies not subject to the direct control of the heads of the branches of government. *E.g.*, Mont. Const. art. V, § 14 (districting and apportionment commission); Mont. Const. art. VII, § 11 (JSC); Mont. Const. art. X, § 9(2) (board of regents of higher education). For example, the Districting and Apportionment Commission is "independent from the legislature" while remaining "part of the legislative branch." *Willems v. State*, 2014 MT 82, ¶ 29, 374 Mont. 343, 325 P.3d 1204. Article V, Section 14 of the Montana Constitution expressly assigns the power to apportion legislative districts to the Districting and Apportionment Commission and, therefore, "denied the Legislature any latitude to invoke its plenary powers" over the same. *Wheat v. Brown*, 2004 MT 33, ¶ 35, 320 Mont. 15, 85 P.3d 765.

[P12] The JSC follows a similar model as an independent commission housed within the judicial branch. The 1972 Constitutional delegates created the JSC as "an independent commission to investigate and recommend retirement, removal or suspension of the judge in question to the supreme court." Proposed 1972 Constitution for the State of Montana, Official Text with Explanation, at 4; *accord Harris II*, ¶ 16; *Shea*, 198 Mont. at 25, 643 P.2d at 215. The JSC may share resources with the judicial branch without sacrificing its independence. *Cf. Willems*, ¶ 29 (the Districting and Apportionment Commission shared staff with the legislative branch, including researchers, attorneys, and support staff, while remaining independent).

[P13] As Judge Warner stated, "Montana's Constitution, Article VII, Section 11, grants the Judicial Standards Commission the exclusive power to screen, investigate and make findings and recommendations concerning ethical complaints against judges to the Supreme Court." *Harris I*, ¶ 121 (Warner, J. specially concurring and dissenting). Absent the JSC acting in excess of its jurisdiction, the functions of the JSC and the Supreme Court are clear-cut and discrete. *Shea*, 198 Mont. at 25, 643 P.2d at 215; *see also infra* Part I.B.2.

2. The JSC's authority to make procedural rules may only be limited by statute.

[P14] The JSC's rulemaking authority is independent from other judicial branch entities. *See supra* Part.I.A.1. That authority, however, extends only to procedural rulemaking. *Harris II*, ¶¶ 18, 20. "[T]he principal limitation on [JSC] rule-making authority is that the rules adopted must be procedural as opposed to substantive in nature." *Harris II*, ¶ 18. Substantive rules are subject to constitutional limitations. *Harris II*, ¶ 20 (finding imposition of costs constituted a substantive sanction in violation of the constitution).

[P15] The JSC's procedural rulemaking authority may also be limited by statute. *Shea*, 198 Mont. at 33–34, 643 P.2d at 220. "[T]here can be no inhibition of the legislative power, irrespective of the rulemaking authority granted to the Judicial Standards Commission, to make suitable provisions relating to the Judicial Standards Commission which do not conflict with the constitutionally granted powers of the Commission." *Id.*

[P16] Article V, Section 13(1) grants the legislature the constitutional power to provide by law "for removal from public office for cause…." The JSC process falls under this grant of power. *Shea*, 198 Mont. at 33–34, 643 P.2d at 220. The JSC must conform its rules to its enabling statutes. *Id.*; *accord Harris I*, ¶¶ 40–41; *Harris II*, ¶ 18; *Jud. Stds. Comm'n v. Not Afraid*, 2010 MT 285, ¶ 42, 358 Mont. 532, 245 P.3d 1116 (Nelson, J. concurring). As the *Shea* Court unanimously concluded:

> The legislature has broad powers relating to removal of public officers under the 1972 Montana Constitution. While the Judicial Standards Commission has a defined constitutional sphere in which it can act, the legislature may move by impeachment or "other proceedings" against public officers, under Art. V, section 13. Public officers include judicial officers. Nothing in the 1972 Constitution prevents the legislature from providing that the Judicial Standards Commission shall proceed against judicial officers by verified complaint. The Commission itself is powerless to set that provision aside. The legislature has the constitutional power to broaden the grounds upon which judicial officers may be removed or disciplined. The Judicial Standards Commission does not enjoy that power.

198 Mont. at 34, 643 P.2d at 220.

[P17] Absent statutory commands, the JSC may enact rules "filling in the gaps and fleshing out the procedures for the enforcement of judicial discipline." *Shea*, 198 Mont. at 33, 643 P.2d at 220.

B. The Montana Constitution limits the Montana Supreme Court's role related to the Judicial Standards Commission.

[P18] Article VII, Section 11 delineates specific roles to different government entities. The Montana Legislature is charged with creating the JSC and providing for confidentiality exceptions. Mont. Const. art. VII, § 11(1), (4). The JSC possesses "the exclusive power to screen, investigate and make findings and recommendations concerning ethical complaints," *Harris I*, ¶ 121 (Warner, J. specially concurring and dissenting), and "make rules implementing this section." Mont. Const. art. VII, § 11(2). The Montana Supreme Court possesses power to impose only those "explicit" sanctions listed by the Constitution. *Harris II*, ¶ 16; Mont. Const. art. VII, § 11(3).

1. The Montana Supreme Court's role in the JSC process is limited by Article VII, Section 11(3).

[P19] "[T]he express mention of a certain power or authority within a statute implies the exclusion of non-expressed powers." *Harris II*, ¶ 16. "The [JSC] shall investigate complaints, and make rules implementing this section." Mont. Const. art. VII, § 11(2). "[T]he supreme court may" impose the expressly stated punishments. Mont. Const. art. VII, § 11(3); *Harris II*, ¶ 17 ("the framers of the Constitution specified what the Commission can recommend and what sanctions the Supreme Court can impose").

[P20] Nothing in Article VII, Section 11(3) authorizes the Montana Supreme Court to "make rules implementing this section." That power rests with the JSC. The Court's role is precisely defined by the Constitution itself and neither the Court nor the JSC may expand upon that role. *Harris II*, ¶ 20.

2. The Montana Legislature provides a limited role for the Montana Supreme Court through writs authorized by law under Article VII, Section 2(1).

[P21] The Montana Supreme Court has "original jurisdiction to issue, hear, and determine writs of habeas corpus and *such other writs as may be provided by law*." Mont. Const. art. VII, § 2(1) (emphasis added). By law, the Montana Legislature provided a writ of prohibition to "arrest[] the proceedings of any tribunal, corporation, board, or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board, or person." MCA § 27-27-101.

[P22] The Montana Supreme Court determined that the JSC exercises a judicial function. *State ex rel. Shea v. Judicial Standards Comm'n*, 198 Mont. 15, 25, 643 P.2d 210, 216 (1982). When the JSC acts outside its jurisdiction, a writ of prohibition may enter. *Id.* at 40.

[P23] This authority depends on a writ provided by law. It does not grant plenary authority for the Montana Supreme Court to direct or control the JSC.

3. The Montana Supreme Court's general supervisory control authority does not apply because the JSC is not a court.

[P24] Article VII, Section 2(2) of the Montana Constitution provides that the Montana Supreme Court "has general supervisory control over all other courts." The Montana Constitution lists those courts as "one supreme court, district courts, justice courts, and such other courts as may be provided by law." Mont. Const. art. VII, § 1. By statute, the Montana "courts of justice" are "(2) the supreme court; (3) the district courts; (4) the municipal courts; (5) the justices' courts; and (6) the city courts and such other courts of limited jurisdiction as the legislature may establish in any incorporated city or town." MCA § 3-1-101.[3] Additionally, water judges practice under the supervision of the Montana Supreme Court. MCA § 3-7-204.

[P25] That list excludes the JSC. *See Harris II*, ¶ 17.

[P26] It must be so. The Constitution's purpose would be undone if the "independent commission to investigate and recommend" discipline of judicial officers was subject to the supervisory control of those judicial officers. Proposed 1972 Constitution for the State of Montana, Official Text with Explanation, at 4.

[P27] In summary, Article VII, Section 11(2) of the Montana Constitution grants the JSC exclusive rulemaking authority. That rulemaking authority is limited by the narrow mandate set forth in Article VII, Section 11 itself, and is further subject to legislative enactments made under Article V, Section 13 or Article VII, Section 11(4). The Montana Supreme Court's role is limited to the express terms of Article VII, Section 11(3) and any appropriate writs provided by law under Article VII, Section 2(1).

II. The Judicial Standards Commission is subject to Montana's public meeting laws when undertaking rulemaking.

A. Background

[P28] Whether the JSC must exercise its rulemaking authority through open meetings implicates both the Montana Constitution and state open meeting statutes. This Opinion only considers whether Montana statutory law requires the JSC to conduct rulemaking through open meetings, since an independent statutory obligation negates the need for additional constitutional analysis. *See Common Cause v. Statutory Comm. to Nominate Candidates for Comm'r of Political Practices* (1994), 263 Mont. 324, 329, 868 P.2d 604, 607 ("it is elementary that courts should avoid constitutional questions if an issue can be resolved otherwise.")

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[3] The statute also lists the "court of impeachment, which is the senate." MCA § 3-1-101(1). This court falls outside the control of the Montana Supreme Court since the Constitution vests the power of impeachment exclusively with the Montana Legislature. Mont. Const. art. V, § 13.

[P29] The Legislature codified the state's open meeting statutes at § 2-3-201, *et seq*., MCA. There, unless irrelevant exceptions apply, Montana law directs that

> [a]ll meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

MCA § 2-3-203(1).

[P30] Whether state law requires JSC rulemakings to occur in an open setting depends on whether (1) the JSC is a governmental body or agency and (2) if the exercise of its rulemaking authority constitutes a "meeting" as contemplated by Montana's open meeting statutes.

B. The JSC is a governmental body under state law.

[P31] Montana's open meeting statutes regulate the meetings of any "agency" or "governmental body." MCA § 2-3-203(1). Section 2-3-203 does not define "agency," but the Supreme Court interprets it to include "any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, determine contested cases, or enter into contracts." *Common Cause*, 263 Mont. at 329; *see also* MCA § 2-3-102(1) (defining "agency" similarly, but exempting the legislative and judicial branches); *but see* MCA § 2-6-1002(10) (defining "public agency" to include all branches of government for the public records act). The Court defines "governmental body" even more broadly, encompassing any "group of individuals organized for a governmental purpose." *Common Cause*, 263 Mont. at 330.

[P32] Here, the JSC meets the definition of "governmental body." First, the JSC consists of five individuals. MCA § 3-1-1101. Second, the JSC's enabling statute grants authority for the commission to "make rules for the conduct of its affairs," hold contested disciplinary proceedings, and make recommendations to the Supreme Court on sanctions against judicial officers. MCA §§ 3-1-1101, 1105–06.

[P33] The Commission's authority to set internal rules, conduct adversarial hearings, and make disciplinary recommendations to the Supreme Court "serves a clear public and governmental purpose" to be carried out by a "group of individuals . . . statutorily organized for that specific governmental task." *Common Cause*, 263 Mont. at 330. Accordingly, the JSC is subject to the requirements of Montana's open meeting statutes because it is a governmental body.

C. The JSC cannot take official action without convening a public meeting.

[P34] Montana law defines a "meeting" as the convening of "a quorum of the constituent membership of a public agency or association described in 2-3-203" with the purpose "to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power." MCA § 2-3-202.

[P35] JSC rules require a quorum to transact business. JSC Rule 5(c) *available at* https://courts.mt.gov/external/supreme/boards/jud_standards/14-0356rules.pdf. The JSC's investigatory and disciplinary functions must be made at a meeting. JSC Rule 5(d). Other matters may be deliberated outside a meeting, but any decision must be reported and ratified at the next meeting. JSC Rule 5(d); *see also Willems v. State*, 2014 MT 82, ¶¶ 23–25, 374 Mont. 343, 325 P.3d 1204 (declining to adopt a constructive quorum rule that would trigger Montana's open meeting law).

[P36] The JSC's creation and transmission of rules governing judicial officer discipline fits squarely within a matter "over which [JSC] has supervision, control, jurisdiction or advisory power." *Common Cause*, 263 Mont. at 331. In fact, setting and conducting these procedures constitutes the central purpose of the Commission. *See* MCA § 3-1-1106 (instructing the JSC to conduct disciplinary hearings and make recommendations on judicial officer discipline).

[P37] Accordingly, the decision by the JSC to engage in rulemaking germane to its purpose must occur in an open meeting with sufficient notice to the public. *Common Cause*, 263 Mont. at 331; JSC Rule 5(c)–(d). The JSC may hold informal discussions outside a formal meeting regarding the need for amendments to its rules. JSC Rule 5(d). But the decision to promulgate and finally adopt rules must be done inside an open meeting with a quorum present. *See Willems*, ¶ 25 (decisions must take place inside of the public meeting); *Common Cause*, 263 Mont. at 331; MCA §§ 2-3-202–03; JSC Rule 5(c)–(d), Rule 15(a).

[P38] A district court may declare void any actions taken in violation of Montana's open meeting statutes. MCA § 2-3-213. The Montana Supreme Court emphasizes that it "will not hesitate to affirm a district court's determination to void such decisions or reverse a court's refusal to do so." *Common Cause*, 263 Mont. at 334.

THEREFORE, IT IS MY OPINION:

> The Judicial Standards Commission is a governmental body or agency under Montana's open meeting statutes. When the JSC exercises its authority to engage in rulemaking, it engages in a "meeting," which must occur in an open setting with sufficient notice to the public.

Sincerely,

/s/ Austin Knudsen
AUSTIN KNUDSEN
Attorney General

VOLUME NO. 60 OPINION NO. 2

LEGISLATIVE INVESTIGATIVE POWERS: SUBPOENAS -- WITNESSES -- RECORDS: § 5-5-107.

HELD: Subject to the assumed material facts, the Senate Select Committee on Judicial Oversight and Reform has authority to issue legislative subpoenas to employees of a coordinate branch of government to compel their attendance at a committee hearing as long as the legislative subpoena complies with the requirements of MCA § 5-5-107(1)-(2) and serves a valid legislative purpose concerning subjects on which the Legislature has authority to legislate.

September 20, 2024

Jason Ellsworth
President
Montana Senate
P.O. Box 200500
Helena, MT 59620-0500

President Ellsworth:

[P1] You requested an Attorney General Opinion on the scope of the Legislature's authority to create legislative committees and to issue legislative subpoenas. In preparing this opinion, I considered the analysis in the legal memorandum accompanying your request and additional research on the topic.

[P2] By virtue of your office, you are entitled to request such an opinion under MCA § 2-15-501(7). I have restated your question presented and provided a short answer as follows:

> **Question Presented:** Whether the Senate Select Committee on Judicial Oversight and Reform ("Select Committee") has authority to issue legislative subpoenas to employees of a coordinate branch of government to compel their attendance at a committee hearing.
> **Short Answer:** Yes. So long as the legislative subpoena complies with the requirements of MCA § 5-5-107(1)-(2) and serves a valid legislative purpose concerning subjects on which the Legislature has authority to legislate.

I. Background

[P3] Montana law provides that "[a] subpoena requiring the attendance of any witness before … a committee established under legislative rules … may be issued by the … presiding officer of any committee before whom the attendance of the witness is desired." MCA § 5-5-107(1).

[P4] A legislative subpoena compelling a witness's attendance before a legislative committee is sufficient if it: (a) states that the "proceeding is before … a committee"; (b) "states the legislative purpose for issuing the subpoena"; (c) "is addressed to the witness"; (d) requires the witness's attendance at a specific time and place; and (e) is "signed by … the presiding officer of [the] committee." MCA § 5-5-107(2)(a)-(e).

[P5] A legislative committee "established under legislative rules" may issue legislative subpoenas to compel witness testimony as long as the presiding officer of the committee issues the subpoena and the contents of the subpoena comply with the requirements in MCA § 5-5-107(2)(a)-(e). As you indicate in your memorandum, the Select Committee was "formed in accordance with all legislative rules" and the subpoenas contained all the information required by MCA § 5-5-107(2)(a)-(e). *See* Mem.1-2. So unless there is a legal deficiency in its formation, the Select Committee has legal authority to issue subpoenas to compel witness testimony.

[P6] Neither Montana state law nor the Montana Senate Rules define "committee," so that term should be understood by its common usage. "Committee" is generally understood to be a "group of people appointed for a specific function"[1] or a "subordinate group to which an … organization refers business for consideration, investigation, oversight or action."[2]

[P7] Select committees are created to investigate specific issues. *See, e.g.*, *Columbia Falls Elem. Sch. Dist. v. State*, 2008 Mont. Dist. LEXIS 483, at *15-16, ¶¶37-38 (discussing creation of a joint select committee to develop an education funding formula). To create a select committee, the President of the Senate must appoint all members of the committee "with the advice of the majority leader and minority leader." Mont. Sen. R. S30-10(4). Montana's Senate Rules provide no other requirements to create a select committee. Assuming that you appointed the members of the Select Committee with the advice of both the majority and minority leaders, *see infra* Sect.II(1)-(2), the Select Committee is a validly constituted legislative committee.

[1] *Committee*, New Oxford American Dictionary (3d ed. 2010).
[2] *Committee*, Black's Law Dictionary (9th ed. 2009).

II. Material Facts

[P8] This Opinion assumes the following material facts based on your request:

(1) The President of the Senate appointed the Senate Select Committee on Judicial Oversight and Reform.
(2) The President of the Senate sought advice from the majority and minority leadership regarding membership of the Select Committee.
(3) The legislative subpoenas contained all the information required by MCA §5-5-107(2)(a)-(e).
(4) A majority of appointed members have attended each meeting, in person or remotely, in which the Select Committee has conducted official business.

III. The Proper Scope and Authority for Legislative Subpoenas.

[P9] In your memorandum, you identify four objections that Chief Justice McGrath raised in an internal memorandum to the Select Committee's authority to issue legislative subpoenas. Mem.1-2. In his memorandum, Chief Justice McGrath argues that the Select Committee lacks authority to issue subpoenas because (A) it has non-voting members of the public, (B) duly-appointed Democratic members appointed to the committee have chosen not to participate, (C) the committee is listed in "Other Legislative Groups" on the Legislature's website, and (D) serving judicial branch employees serves no plausible legislative purpose. Mem.1-2. None of these purported deficiencies appear to undermine the Select Committee's authority to issue legislative subpoenas to judicial branch employees.

A. The inclusion of non-voting public members.

[P10] Nothing in Montana law–statute, Senate Rule, or current or past practice–supports the claim that the presence of non-voting members of the public divests the Select Committee of its subpoena power. *See* Mem.2. The relevant statute grants subpoena power to "a *committee established under legislative rules*," but it does not distinguish between legislative committees with public members and those without. *See* MCA § 5-5-107(1) (emphasis added).

[P11] Nor do the Senate Rules suggest that the presence of non-voting members limits or impairs the Select Committee's subpoena powers. Quite the opposite, in fact. Under Rule S30-40, the majority and minority leader are ex officio non-voting members of all committees, *see* Mont. Sen. R. 30-40. In other words, *every committee* has non-voting members. If legislative committees lose subpoena power because of non-voting members, then all legislative committees in Montana lack subpoena power.

[P12] There are multiple examples of current and former committees with public members that retained subpoena power, like the Environmental Quality Council (interim committee), *see* MCA § 5-16-101; MCA § 75-1-312. The Montana Commission on the Unauthorized Practice of Law included public members, and its

subpoena power was explicitly approved by the Montana Supreme Court. *See In re Comm'n on Unauthorized Practice of Law*, 246 Mont. 1, 4-9 (1990).

[P13] And as a practical matter, a rule that non-voting public members strip a committee of subpoena power would impair select committees' principal investigative function. Public members often have particularized knowledge on discrete topics that their legislative counterparts do not, so their participation and input at committee meetings is often invaluable. Given the lack of contrary legal authority, there is no reason to conclude that non-voting public members deprive committees of subpoena power.

B. The lack of bipartisan attendance at committee meetings.

[P14] The lack of bipartisan participation in committee does not affect a legislative committee's authority to conduct business. For a committee to transact business, a quorum is required. Mont. Sen. R S30-40(1). A quorum is a majority of the members of the committee that are physically or remotely present, and a majority of the quorum is sufficient for committee action. *Id.* The minority and majority leaders are ex officio non-voting members of all committees for establishing a quorum. Mont. Sen. R. S30-40(2). Neither bipartisan participation nor attendance is required.

[P15] The Select Committee first appointed 15 voting members: ten Republicans and five Democrats. The Senate Rules are clear about what is required for a quorum: a simple majority or eight members. And as long as eight voting members are present, the Select Committee may lawfully conduct business, even if Democrat members boycotted the Select Committee's meetings.

[P16] The Montana Supreme Court adopted the same definition of quorum in the context of legislative committees. *Assoc. Press v. Usher*, 2022 MT 24, ¶ 6 n.1, 407 Mont. 290, 503 P.3d 1086 (McGrath, C.J., opinion of court) (observing that for 19-member committee a "quorum requires the presence of ten members" and "the usual definition [of a quorum] is a majority of *all members* in a body" (emphasis added)); *see also Willems v. State*, 2014 MT 82, ¶ 23, 374 Mont. 343, 325 P.3d 1204 (McGrath, C.J., concurring) ("Commission consists of five members; thus, a gathering of three or more members of the Commission constitutes a quorum"). But in the many cases where the Montana Supreme Court has defined quorum,[3] it has

[3] *See, e.g.*, *Edgewater Townhouse Homeowner's Ass'n v. Holtman*, 256 Mont. 182, 186 (1993) ("quorum requires the representation in person or by proxy of 50% of the *total authorized votes*") (emphasis added)); *Willems v. State*, ¶ 23 n.2 (quorum is "the minimum number of members (usu. a majority of all the members) who must be present for a deliberative assembly to legally transact business") (quoting *Quorum*, Black's Law Dictionary (Bryan A. Garner ed., 9th ed., West 2009))); *AP v. Usher*, ¶ 6 ("quorum requires the presence of ten *members* of the Committee") (emphasis added)); *see also, e.g.*, *Assoc. Press v. Crofts*, 2004 MT 120, ¶ 31, 321 Mont. 193, 89 P.3d 971 (same); *Boulder Monitor v. Jefferson High Sch. Dist. No. 1*, 2014 MT 5, ¶ 21, 373 Mont. 212, 316 P.3d 848 (similar).

never mentioned a bipartisan requirement. When the "language is clear and unambiguous," there is no need to reinterpret the definition of quorum. *See Mont. Sports Shooting Ass'n v. State*, 2008 MT 190, ¶ 11, 344 Mont. 1, 185 P.3d 1003.

[P17] A rule that members of the minority party must be present at committee hearings contravenes the text and purpose of the Senate Rules and has no basis in precedent. Imposing a partisan presence requirement would defeat the purpose of the quorum's majority requirement because members of the minority party could forever prevent a committee from conducting business. For that reason, only a simple majority is required. There is no requirement that some subset of the minority members must be present before a committee may conduct business.

C. The Committee's placement on the Legislature's website.

[P18] To my knowledge, no state statute nor any caselaw supports Chief Justice McGrath's claim that a committee's classification on the Legislature's website has any bearing on whether it meets the legal requirements of a "committee." To form a valid "select committee" under Montana law, complete with the authority to issue subpoenas under MCA § 5-5-107(1), the President of the Senate must appoint all members of the committee "with the advice of the majority leader and minority leader." Mont. Sen. R. S30-10(4). Nothing more is required.

[P19] And there is no indication–in Montana statutes or caselaw–that a committee's placement on the Legislature's website is based on whether it meets the relevant legal requirements for a "committee."[4] Even so, the Select Committee is also categorized under the "Other Committees" tab on the legislature's website.[5]

D. The existence of a valid legislative purpose.

[P20] Neither the U.S. nor the Montana Constitution contains an "enumerated constitutional power … to conduct investigations or issue subpoenas," but legislative bodies have "power 'to secure needed information' … to legislate." *Trump v. Mazars USA, LLP*, 591 U.S. 848, 862 (2020) (quoting *McGrain v. Daugherty*, 273 U.S. 135, 161 (1927)). That "power of inquiry–with process to enforce it–is an essential and appropriate auxiliary to the legislative function." *McLaughlin v. Mont. State Legislature*, 2021 MT 178, ¶ 6, 405 Mont. 1, 493 P.3d 980 (quoting *Mazars*, 591 U.S. at 862).

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[4] This is like using a statute's title to define its scope. But the Montana Supreme Court rejected the argument that a statute's title alone can determine the statute's scope. *See In re Game Farm License No. 319 of Brogan*, 283 Mont. 413, 420 (1997). And if a statute's title does not control its meaning, then a committee's categorization on a website does not definitely determine whether it meets the legal requirements for a "committee."

[5] *See* https://legmt.gov/.

[P21] This power is "broad" and "indispensable," yet it is subject to several limitations. *Mazars*, 591 U.S. at 862 (quoting *Watkins v. United States*, 354 U.S. 178, 187, 197 (1957)). Relevant here, a legislative subpoena "is valid only if it is 'related to, and in furtherance of, a legitimate task of [the Legislature].'" *Id.* at 862-63 (quoting *Watkins*, 354 U.S. at 187). So legislative subpoenas must serve a "valid legislative purpose," *id.* at 863 (quoting *Quinn v. United States*, 349 U.S. 155, 161 (1955), and "concern a subject on which legislation could be had," *id.* (quoting *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 506 (1975) (cleaned up)). They may not issue for "law enforcement" purposes, for example, because those powers are assigned to the executive and judicial branches. *See id.* (quoting *Quinn*, 349 U.S. at 161).

[P22] Courts must presume that a legislative subpoena "has as its object a legitimate goal toward possible legislation." *McLaughlin*, ¶ 8; *see also McGrain*, 273 U.S. at 178-79 (courts "bound to presume that the action" has "legitimate object" if "it is capable of being so construed"). If the information sought through the legislative subpoena concerns a subject on which the Legislature may legislate, "courts should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province." *Eastland*, 421 U.S. at 506 (quoting *Terry v. Brandhove*, 341 U.S. 367, 378 (1951)); *see also Senate Select Comm. on Ethics v. Packwood*, 845 F. Supp. 17, 20-21 (D.D.C. 1994) (court's review limited to determining whether information sought is "not plainly incompetent or irrelevant to any lawful purpose" of the committee "in the discharge of [its] duties." (quoting *McPhaul v. United States*, 364 U.S. 372, 381 (1960)). While courts have a limited role in determining the validity of the Legislature's asserted legislative purpose for issuing a subpoena, judicial officers acting in their personal capacity have a still more limited role. *See* Mem. 2-3.

[P23] But when a legislative subpoena is issued to a coordinate branch, courts must also account for the separation of powers principles at stake. *Mazars*, 591 U.S. at 869. To do that, Montana courts consider the four safeguards outlined in *Mazars*. *See McLaughlin*, ¶¶10-13.

[P24] First, courts must consider "whether the asserted legislative purpose warrants the significant step" of issuing the subpoena, given the need to avoid constitutional conflict. *Mazars*, 591 U.S. at 869. Legislative subpoenas served on the executive or on senior judicial officers raise more separation-of-powers concerns than those served on lower-level employees within the coordinate branches. *See id.* at 868 (because "President is the only person who alone composes a branch of government" legislative subpoenas seeking personal information raise "[palpable] separation of powers concerns"); *cf. Republican Nat'l Comm. v. Pelosi*, 602 F. Supp. 3d 1, 29-30 (D.D.C. 2022), *vacated as moot*, 2022 U.S. App. LEXIS 26068 (D.C. Cir. Sept. 16, 2022) (applying "deferential" review of the legislative purpose supporting service of subpoena seeking RNC records relating to the Select Committee's January 6th investigation). So with legislative subpoenas directed to senior executive or judicial branch officers, courts should consider whether the information

sought could reasonably be obtained through other sources. *See Mazars*, 591 U.S. at 869-70.

[P25] Second, "to narrow the scope of possible conflict between the branches, courts should insist on a subpoena no broader than reasonably necessary to support [the Legislature]'s legislative objective." *Id.* at 870. The more tailored the subpoena requests, the more likely that it will avoid "unnecessary intrusion" into a coordinate branch's operations. *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 387 (2004).

[P26] Third, courts should also "be attentive to the nature of the evidence offered by [the Legislature] to establish that the subpoena advances a valid legislative purpose"–the "more detailed … the better." *Mazars*, 591 U.S. at 870. When a legislative subpoena "adequately identifies its aims and explains why the [information sought] will advance its consideration" of potential legislation, it is far easier to "conclude that [the] subpoena is designed to advance a valid legislative purpose." *Id.* at 870-71 (citing *Watkins*, 354 U.S. at 205-06).

[P27] Fourth, "courts should consider the burdens imposed on the coordinate branch by the subpoena, with an eye to ensure that the subpoena is not used for "institutional advantage[s]." *Id.* at 871. But burdens on officers' and employees' "time and attention stemming from judicial process, without more, generally do[es] not cross constitutional lines." *Id.*

[P28] While courts must take "adequate account of [these separation-of-powers] concerns" when evaluating legislative subpoenas seeking information from coordinate branches, it "remains 'the duty of *all* citizens to cooperate" with reasonable requests for information the Legislature "need[s] for intelligent legislative action." *Id.* (citation omitted). And courts remain obligated to presume that a legislative subpoena "has as its object a legitimate goal toward possible legislation." *McLaughlin*, ¶ 8; *see also McGrain*, 273 U.S. at 178-79 ("bound to presume that" subpoena has "legitimate object" if "it is capable of being so construed").

[P29] A committee's subpoena need not identify any specific legislation that it intends to enact. *See, e.g., Trump v. Mazars USA, LLP*, 140 S. Ct. 2019 (2020) ("It mattered not that the Senate's authorizing resolution lacked an 'avow[al] that legislative action was had in view' because … 'the subject to be investigated was ... [p]lainly [a] subject ... on which legislation could be had' and such legislation 'would be materially aided by the information which the investigation was calculated to elicit.'") (quoting *McGrain*, 273 U.S. at 176-77). Rather, "[t]o find that a committee's investigation has exceeded the bounds of legislative power it must be obvious that there was a usurpation of functions exclusively vested in the Judiciary or the Executive." *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951).

[P30] The Legislature possesses broad investigative authority under its general appropriations authority in Article V, Section 11(4). The Legislature's extensive power to assert a legislative purpose, moreover, is bolstered in this instance by Article V, Section 13(1) of the Constitution, which grants it the power to provide by

law "for removal from public office for cause…." This power includes the ability "to make suitable provisions relating to the Judicial Standards Commission." *State ex rel. Shea v. Judicial Standards Comm'n*, 198 Mont. 15, 33–34, 643 P.2d 210, 220 (1982). The Court in *Shea* upheld the Legislature's ability to require the Judicial Standards Commission proceed by verified complaint, irrespective of the Commission's rules. 198 Mont. at 30–34, 643 P.2d at 218–20. Similarly, as your memorandum acknowledges, Article VII, Section 11 of the Constitution vests the Legislature with certain powers over the Judicial Standards Commission, such as regulating the disclosure of proceedings. Mont. Const. art. VII, § 11(4); *State ex rel. Shea v. Judicial Standards Comm'n*, 198 Mont. 15, 33–34, 643 P.2d 210, 220 (1982).[6]

[P31] The legislative subpoenas at issue unequivocally state a valid legislative purpose. As your memorandum explains, "[t]he requested testimony will be used by the Committee for the purpose of educating the Committee so that it may continue to formulate policy and prepare legislation for preintroduction during the 2025 Legislative Session regarding the supervision and oversight of judges. The Committee will also consider whether to introduce legislation regarding the disclosure of proceedings of the [Judicial Standards] Commission as authorized by Article VII, Section 11(4), of the Montana Constitution. See Senate Bill No. 313 (2023)." Additionally, "the Committee recognizes that the essential functions of the [Judicial Standards] Commission are paid through legislative appropriations as opposed to the assessment of costs and fees as identified in *Harris v. Smart*, 2003 MT 135, 316 Mont. 130, 68 P.3d 889. Given the Senate's direct involvement in the appropriation process, the Committee desires to analyze the nature of all complaints and grievances for further understand the Commission's workload."

THEREFORE, IT IS MY OPINION:

> Subject to the assumed material facts, the Senate Select Committee on Judicial Oversight and Reform has authority to issue legislative subpoenas to employees of a coordinate branch of government to compel their attendance at a committee hearing as long as the legislative subpoena complies with the requirements of MCA § 5-5-107(1)-(2) and serves a valid legislative purpose concerning subjects on which the Legislature has authority to legislate.

Sincerely,

/s/ Austin Knudsen
AUSTIN KNUDSEN
Attorney General

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[6] The People of Montana overwhelmingly supported granting the Legislature this power. *See* Constitutional Amendment 9 (1980). Election results available online at https://archive.org/details/reportofofficial1980montrich/page/n3/mode/2up (last accessed September 23, 2024).

VOLUME NO. 60 OPINION NO. 3

MONTANA CODE ANNOTATED: §§ 13-1-111(2); 13-1-111(3); 46-14-312(2); 46-14-311(1); 46-14-312(3)
MONTANA CONSTITUTION: Article IV, § 2; Article XII, § 3

HELD: A person convicted of a felony and sentenced under MCA § 46-14-312(2), and thereafter placed in the Montana State Hospital is ineligible to vote while confined at MSH pursuant to that criminal sentence.

October 22, 2024

Mr. James Lapotka
Lake County Attorney
106 4th Avenue East
Polson, MT 59860

Dear Mr. Lapotka:

[P1] By virtue of your office, you are entitled to request such an opinion pursuant to MCA § 2-15-501(7). Therefore, I have restated your question presented and provided a short answer as follows:

Question Presented: Is a person convicted of a felony and sentenced under MCA § 46-14-312(2), and thereafter placed in the Montana State Hospital (MSH), eligible to vote while confined at MSH pursuant to that criminal sentence?

Short Answer: No. Such a person is ineligible to vote under Article IV, § 2 of the Montana Constitution because the person is "serving a sentence for a felony in a penal institution." The rule established by that section is that when a felon is placed in a non-confined status, such as parole, probation, or a deferred or suspended sentence, then the person is eligible to vote (unless the person violates the terms of his or her status and is sent to a correctional facility). However, Article IV, § 2 cannot reasonably be read as conferring the right to vote when a person is confined pursuant to a felony sentence and can be transferred to "another correctional … facility" at the direction of a government official simply because the person no longer requires medical care. This interpretation would create absurd results–such as a prisoner who is taken to the hospital on election day to give birth or undergo surgery becoming eligible to vote based on nothing more than the timing of their medical emergency.

Additionally, a person who has received a sentence under MCA § 46-14-312(2) is "of unsound mind, as determined by a court" under Article IV, § 2, and their right to vote is "necessarily suspended as a condition of confinement" under Article XII, § 3. These provisions were enacted to ensure that the mentally ill do not enjoy fewer rights as a result of their condition, but the idea that a felon who is serving in a mental hospital rather than prison is eligible to vote would mean that the person is receiving *more* rights.

Analysis

I. Article IV, § 2's Voting Qualification Is Based on Physical and Legal Status, and A Person in a Mental Health Facility Pursuant to § 46-14-312(2) Is Both Confined and Subject to Being Transferred to "Another Correctional … Facility" at the Government's Discretion.

A. A Felon Who is Sentenced to Custody Is Ineligible to Vote Until the Person Has Earned the Right to Be, and Physically is, Out of Confinement.

[P2] Article IV, § 2 was adopted in the 1972 Constitution, and it narrowed the ineligibility to vote to those who were convicted of a felony and "serving a sentence in a penal institution." The legislature has also codified this requirement in MCA § 13-1-111(2). This constitutional provision is mandatory and self-executing, and it is effective regardless of whether the court included such restriction when sentencing the person. *Emery v. State*, 177 Mont. 73, 81–82, 580 P.2d 445, 450 (1978).[1]

[P3] The primary reason for Article IV, § 2 was the drafters' conclusion that the 1889 Constitution's requirement of a pardon from the Governor to regain one's right to vote was too stringent and difficult to achieve. *See* Mont. Const. of 1889, art. IX, § 2.[2] At the 1972 constitutional convention, a delegate stated, "[t]he presumption is that when a man *comes out of prison*, he should be encouraged to resume normal civic relationships." *See* Montana Constitutional Convention, Verbatim Transcript, Feb. 17, 1972, Vol. III, p. 392 (emphasis added).[3] Similarly, the delegates specifically contemplated that a person who is on parole or receives a deferred sentence would be eligible to vote. *Id.* at 395-98. A delegate stated that "if [a person is] in the institution or in jail, they shouldn't be able to vote, but if the authorities feel

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[1] Article IV, § 4 and Article II, § 28(2) provide that at the termination or discharge of "state supervision," a person also regains other rights, including the right to hold office. For the reasons discussed herein, a person who is serving a sentence for a felony at MSH has not achieved discharge from "state supervision."

[2] This section provided, "no person convicted of a felony shall have the right to vote unless he has been pardoned." *See* https://courts.mt.gov/external/library/docs/1889cons.pdf.

[3] https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1039&context=montana-constitution.

they're qualified to be out and amongst the rest of us, they should have equal rights with us." *Id.* at 398. Further, the purpose of this provision was that the drafters believed denying a "release[d]" felon the right to vote "hinders rehabilitation." *Id.* at 392.

[P4] It is clear from this discussion that the drafters' focus was on the legal and physical status of the person, and whether they had earned the right to return to society through parole, probation, a deferred or suspended sentence, or a similar status. As discussed in the next two sections, serving a portion of a sentence at MSH is not akin to these statuses because the person is not out in society but rather is both in custody and can be transferred to another correctional facility at the government's discretion. *See* Part I(B).

B. A Person at MSH Pursuant to MCA § 46-14-312 Is Not Free to Leave and Can Be Transferred to Another Correctional Facility for No Additional Wrongful Conduct, but Rather Solely Based on Improvement in Their Condition.

[P5] Two key facts show that a person who is sent to MSH pursuant to MCA § 46-14-312(2) has a physical and legal status of "serving a sentence in a penal institution," rather than one of being out of custody. First, the purpose of being placed at MSH is to be rehabilitated to serve the remainder of the person's sentence, and accordingly the person has no right to avoid another correctional facility by refraining from further wrongful conduct. This is fundamentally different than a person who is on probation or parole. Second, there are several facts showing that the person is serving a sentence in custody rather than being granted something similar to parole, probation, or a deferred sentence: the person is not free to leave; their time at MSH under that statute is limited to the maximum prison sentence they could receive; and they also receive credit toward their sentence for their time at MSH.

1. A Person at MSH Has No Right to Avoid Being Sent to Another Correctional Facility, but Rather Is Being Treated at MSH in Order to Be Able to Be Sent to Another Correctional Facility.

[P6] Under MCA § 46-14-312(2), the Director of the Department of Public Health and Human Services has full discretion to place a person in another correctional facility after the person has received treatment. Moreover, MCA § 46-14-312(3) permits a person to petition for a review of their sentence based on changes in the person's mental disease or disorder, not their conduct. This is fundamentally different from earning a status such as parole or probation. In those circumstances, a person has a right to be out of custody, unless they have violated a condition of their release. *See, e.g.*, MCA § 46-18-203 (revocation of suspended or deferred sentence); *see also State v. Larson*, 2023 MT 236, ¶ 8, 414 Mont. 200, 203, 539

P.3d 655, 658 ("[T]he liberty interests at stake in a probation revocation proceeding require 'the minimum requirements of due process.'").

2. The Liberty of a Person at MSH Under MCA § 46-14-312(2) Is Restricted; Their Time Is Limited to the Maximum Prison Sentence; and They Receive Credit Against Their Prison Sentence for Time at MSH.

[P7] It is well established that when a person is committed to MSH, they are "deprive[d] … of their physical freedom." *In re N.A.*, 2013 MT 255, ¶ 15, 371 Mont. 531, 533, 309 P.3d 27, 30. Recognizing this fundamental fact, the legislature has capped the maximum amount of time that a person may be sentenced to MSH under MCA § 46-14-312(2) at "a definite period of time not to exceed the maximum term of imprisonment that could be imposed." This cap on the length of the sentence shows that a person who is at MSH has a restriction on their liberty akin to that imposed on a person who is sentenced to a correctional facility.

[P8] Another key indicator is that a person who is in custody receives credit for time served while they are in custody. This is based on the Monta Supreme Court's recent decision in *State v. Tippets*, 2022 MT 81, 509 P.3d 1. There the court looked at the nature of the Sanction, Treatment, Assessment, Revocation, and Transition ("START") facility to determine if it was a "detention center" under MCA § 46-18-203(7)(b). *Tippets*, ¶ 18. The court concluded that it qualified because the purpose of the START facility was to confine prisoners to a secured facility as a result of sanctions imposed by the Department of Corrections. *Id.* at ¶ 19. The court also found that "[a]lthough the purpose for confinement at START may be rehabilitation, *rehabilitation is one consideration and purpose for any criminal sanction and resulting confinement*." *Id.* (emphasis added). The court also recognized that "[i]nmates at START are not free to leave the facility until they have served their sanction period." *Id.* These same facts are present for a person who is placed at MSH pursuant to MCA § 46-14-312(2).

[P9] All of these indicia show that when a person is at MSH, they are as a practical matter, "serving a sentence for a felony in a penal institution" even if they are primarily receiving medical treatment while they are at MSH.

[P10] Finally, the Department of Corrections ("DOC") and the Secretary of State ("SOS") entered into a Memorandum of Understanding ("MOU") in 2020 which defines "serving a sentence for a felony in a penal institution" and confirms the Attorney General's interpretation of Article IV, § 2. The MOU agrees that a person convicted of a felony and sentenced under MCA § 46-14-312(2), and thereafter placed in the MSH is deemed incarcerated in a penal institution. See *Memorandum of Understanding between Montana Department of Corrections and Montana Secretary of State: Persons Serving Felony Setences in a Penal Institution* (July 1, 2020) (on file with the Montana Department of Corrections).

C. The Contrary Interpretation–That Mere Physical Absence from Prison Automatically Results in Eligibility–Would Lead to Absurd Results and Arbitrarily Discriminate Among Prisoners.

[P11] The Montana Supreme Court has long recognized that "constitutional construction should not 'lead to absurd results, if reasonable construction will avoid it.'" *Brown v. Gianforte*, 2021 MT 149, ¶ 33, 488 P.3d 548, 557 (quoting *Nelson v. City of Billings*, 2018 MT 36, ¶ 16, 390 Mont. 290, 412 P.3d 1058); *see also Anaconda-Deer Lodge Cnty. v. Lorello*, 181 Mont. 195, 197, 592 P.2d 1381, 1382 (1979) (An "interpretation … [that] would lead to absurd results …. cannot be a rational interpretation of the Constitution.").

[P12] Here, interpreting Article IV, § 2 to make a felon serving a sentence eligible to vote whenever they are not physically in prison would lead to absurd results. For example, a pregnant woman sentenced to prison who happened to give birth on election day and a prisoner who was scheduled for surgery on election day, both of which were transported to a hospital to receive medical care, would not be serving their sentences "in a penal institution"; rather, on that particular day they would be serving their sentences in the nearby hospital. This would mean that they are eligible to vote, even though neither had any change in their legal status nor had been released from custody. Another example would be a prisoner who escapes from prison on election day. This person would not be "in a penal institution," but it would be absurd to conclude they are therefore eligible to vote under Article IV, § 2.

[P13] In addition to being an absurdity, this interpretation would create arbitrary classifications based merely on medical condition on a given day. Prisoners whose medical condition required them to be transported outside the prison would be given the right to vote, while those without such a medical condition would not receive the right to vote even if they were otherwise identically sentenced and situated. Even similarly situated prisoners receiving psychiatric treatment – one in the prison and one at MSH – would be treated differently, even if they were sentenced for the same crime.

[P14] These hypotheticals show that the correct interpretation of Article IV, § 2 is that it confers eligibility when a felon serving a sentence has had both a change in physical and legal status that gives them a right to be out of custody, such as parole, probation, or a deferred or suspended sentence. *See* Part I(A). This is a rational distinction that not only is consistent with the stated purpose of the delegates, but also avoids absurd results.

II. Additionally, a Person in MSH Based on § 46-14-312(2) Is "of Unsound Mind, as Determined by a Court" under Article IV, § 2, and Their Right to Vote Is "Necessarily Suspended as a Condition of Commitment," under Article XII, § 3.

[P15] There is an additional basis to conclude that a person serving a sentence under MCA § 46-14-312(2) is ineligible to vote. Article IV, § 2 provides as an additional qualification that the person must not be "of unsound mind, as determined by a court." This requirement has also been codified by the legislature. MCA § 13-1-111(3). Similarly, Article XII, § 3(2), provides that "[p]ersons committed to … institutions shall retain all rights except those necessarily suspended as a condition of commitment." These provisions both support the conclusion that a person committed to MSH as a result of a criminal sentence for a felony is not eligible to vote.

[P16] MCA § 46-14-312(2) states as its condition that "the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or disorder or developmental disability as described in [MCA §] 46-14-311." That section describes such a disease or disability as one that "rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law." MCA § 46-14-311(1). This definition fits comfortably within the "unsound mind" language of Article IV, § 2. Moreover, this finding is made by the court as part of sentencing. Given this, both requirements for this portion of Article IV, § 2 are present.

[P17] Similarly, Article XII, § 3(2) recognizes the possibility that rights may be "necessarily suspended as a condition of commitment." For all of the reasons described in Part I(A), (B), a person who is sentenced for a felony loses their liberties and can be transferred to another correctional facility at the discretion of the Director of the Department of Public Health and Human Services. In such a circumstance, the person necessarily does not have the right to vote that is denied to similarly situated persons who are sent directly to a correctional facility, rather than to MSH. The purpose of these provisions is to ensure that persons who are committed in state institutions do not have fewer rights than similarly situated individuals on account of their mental illness. *See, e.g.*, Montana Constitutional Convention, Verbatim Transcript, Mar. 15, 1972, Vol. VI, p. 2304-2307 (comparing people who go to private facilities with those in Warm Springs State Hospital).[4] But interpreting Article IV, § 2 to give the right to vote to persons who are at MSH rather than another correctional facility would give *additional* rights to persons because of mental illness. This is contrary to the constitutional structure and purpose.

THEREFORE, IT IS MY OPINION:

> A person convicted of a felony and sentenced under MCA § 46-14-312(2), and thereafter placed in the Montana State Hospital is ineligible to vote while confined at MSH pursuant to that criminal sentence.

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[4] https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1042&context=montana-constitution.

Sincerely,

/s/ Austin Knudsen
AUSTIN KNUDSEN
Attorney General

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. This list includes notices in which those rules adopted during the period May 24 through November 1, 2024, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This list does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2024, this list, and the table of contents of this issue of the Register.

This list indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2024 Montana Administrative Register.

To aid the user, this list includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

2-5-643 Intent to Award - Public Notice - Competitive Sealed Bids - Competitive Sealed Proposals - Sole Source Procurement - Exigency Procurements - Alternative Procurement Methods - Requisitions From the Agencies to the Division - Enforcing the Contract - Contract Renewal - Completion Notification for Contracts With Performance Security - Bid, Proposal, and Contract Performance Security, p. 770, 1450

2-12-646 Local Government Public Meeting Recordings, p. 781, 1574

(Public Employees' Retirement Board)

2-43-647 Defined Contribution Retirement Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement - 457(b) Deferred Compensation Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement, p. 784, 1576

2-43-648 Basic Period of Service - Receipt of Service Credit on or After Termination of Employment - Calculation of Highest Average Compensation or Final Average Compensation, p. 787, 1577

2-43-649 Distribution to Participant – Distribution Upon Death of Participant, p. 1498, 2051

AGRICULTURE, Department of, Title 4

4-24-284 Montana Pesticides Act, p. 1903

STATE AUDITOR, Office of, Title 6

6-287 Required Disclosure Provisions in Medicare Supplements, p. 496, 1188
6-288 Pharmacy Benefit Manager Maximum Allowable Cost Appeals, p. 791, 1866
6-289 Registration Exemption for Investment Advisors to Private Funds – Examinations, p. 1405, 1999
6-291 Petition to Rulemaking – Model Procedural Rules, p. 2114

COMMERCE, Department of, Title 8

8-94-215 Administration of the Community Development Block Grant (CDBG) Program, p. 1939, 2179
8-99-213 Administration of the Tourism Development and Enhancement Revolving Loan Fund, p. 1257, 1871
8-99-214 Administration of the Agritourism Grants Program, p. 1941, 2180

EDUCATION, Title 10

(Board of Public Education)

10-53-140 World Language Content Standards, p. 1946
10-53-141 Mathematics Contents Standards, p. 2341
10-56-286 Assessment Standards, p. 662, 2000
10-57-289 Educator Licensure Standards, p. 175, 1189

(Montana Arts Council)

10-111-2401 Model Rules – Grant Eligibility and Conditions, p. 1963

(Montana Historical Society)

10-121-2401 Collection Acquisition and Select Collection Loans, p. 1088, 1872

(Montana State Library)

10-102-2303 State Aid to Public Libraries, p. 984, 1578

(Office of Public Instruction)

10-7-124 School Finance, p. 1501, 1944, 2182
10-16-133 Education Savings Accounts, p. 1085, 2052

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-625 Department Liaisons, p. 304, 666, 1873
12-628 Montana Wildlife Habitat Improvement Act Termination Date and Eligible Expenditures, p. 668, 1452
12-630 Closing the Yellowstone River From the Joe Brown Fishing Access Site to the Carbella BLM Boat Ramp in Park County, p. 1387, 1453

12-631 Electronic Tagging, p. 1517, 2140
12-633 Closing the Bitterroot River From Chief Looking Glass Fishing Access Site to Its Confluence With the Clark Fork River in Missoula County, p. 2001
12-634 Closing the Clark Fork River From the Milltown State Park to the Petty Creek Fishing Access Site in Missoula County, p. 2003
12-635 Closing the Stillwater River From the Absaroka Fishing Access Site to the Jeffrey's Landing Fishing Access Site in Stillwater County, p. 2005
12-636 Closing Tower Rock State Park in Cascade County, p. 2054
12-637 Closing the Tongue River Reservoir in Big Horn County, p. 2142

(Fish and Wildlife Commission)
12-624 Resident Super-Tag Hunting License, p. 1514, 2135
12-626 Big Game Management Policy, p. 502, 1579

(State Parks and Recreation Board)
12-629 Smith River Private and Commercial Use Permit System, p. 1412, 2137

ENVIRONMENTAL QUALITY, Department of, Title 17

17-439 Ground water Mixing Zones - Nondegradation of Water Quality - Criteria for Determining Nonsignificant Changes in Water Quality - Criteria for Nutrient Reduction From Subsurface Wastewater Treatment Systems - Amendments to Circular DEQ-20 - Source Specific Well Isolation Zones, p. 361, 1581
17-441 Motor Vehicle Recycling and Disposal - Reimbursement Payments for Abandoned Vehicle Removal, p. 504, 1878
17-442 Amendment to Circular DEQ-1 - Ultraviolet Treatment of Groundwater Sources of Public Water Systems, p. 1417, 2144
17-443 Need Findings in the Major Facility Siting Act (MFSA), p. 818, 1879
17-444 Adoption of a New Version of Department Circular DEQ-8 Montana Standards for Subdivision Storm Water Drainage, p. 1259, 2191
17-445 Incorporation by Reference of Federal Air Quality Regulations, p. 1278, 2056
17-446 Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act, p. 1095, 2201
17-447 Application Contents, p. 1424, 2057
17-448 Cleaning Up Repealed References in ARM Title 17, Chapter 50, p. 2386
17-449 Regulatory Reform and Clean Up of Repealed References in ARM Title 17, Chapter 4, p. 2392

TRANSPORTATION, Department of, Title 18

18-197 Alternative Fuels, p. 1104, 1628
18-198 Railroad Crossing Signalization, Tourist-Oriented Directional Signs,

and Right-of-Way Occupancy by Utilities, p. 1288, 1880
18-200 Motor Carrier Services, p. 987, 1454
18-201 Aeronautical Grant and Loan Program, p. 1966, 2202

CORRECTIONS, Department of, Title 20

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20-7-73 Pre-Parole Screening, p. 1109, 1881
20-7-74 Conditions on Probation or Parole, p. 1639, 2146

JUSTICE, Department of, Title 23

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23-13-284 Certification of Public Safety Officers, p. 2118

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24-29-417 Workers' Compensation, p. 991, 1456
24-30-408 Industrial and Workplace Safety, p. 1968, 2203
24-33-416 Home Inspector Program, p. 672, 1192
24-35-420 Independent Contractors, p. 1521, 2061
24-35-421 Independent Contractor Exemption Certificate, p. 1528, 2063
24-40-414 Unemployment Insurance, p. 511, 1457
24-301-409 State Building Code, p. 1708, 2223
24-301-418 Underground Facilities, p. 1431, 2013

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24-121-18 Board of Barbers and Cosmetologists, p. 1292, 2007

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24-126-39 Board of Chiropractors, p. 680, 1461

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24-138-83 Board of Dentistry, p. 837, 2205
24-138-84 Dental Hygiene Limited Access Permit, p. 1782, 1463

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24-141-39 State Electrical Board, p. 579, 1194

(Board of Funeral Service)
24-147-41 Board of Funeral Service, p. 697, 2012

(Board of Nursing)
24-159-96 Board of Nursing, p. 1428, 2218

(Board of Outfitters)
24-171-43 Board of Outfitters, p. 1642, 2149

(Board of Pharmacy)
24-174-81 Board of Pharmacy, p. 1659, 2219

(Board of Physical Therapy Examiners)
24-177-37 Board of Physical Therapy Examiners, p. 1335, 1882

(Board of Realty Regulation)
24-210-49 Fee Abatement – Administrative Suspension – Property Management – Timeshare Registration, p. 1701, 2153

(Board of Respiratory Care Practitioners)
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37-1057 12-Month Postpartum Continuous Eligibility for Medicaid and HMK, p. 1032, 2021
37-1058 IV-E Foster Care Services, p. 872, 2023
37-1062 Hearing Aid Services, p. 1342, 2024

37-1065 Community First Choice Services, p. 1784, 2129
37-1066 Communicable Disease Control, p. 1038, 1885
37-1067 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 1132, 1441, 2269
37-1068 Home Health Services, p. 1156, 2066
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37-1073 Medicaid Home and Community Based Waiver Program, p. 1349, 2067
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37-1087 Vocational Rehabilitation Visual Medical Program, p. 2037
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37-1103 Certification of Persons Assisting in the Administration of Medication, p. 2131
37-1104 Updating Medicaid and Non-Medicaid Provider Rates, Fee Schedules, and Effective Dates, p. 2173

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38-3-263 Completion of Applications for Motor Carrier Operating Authority, p. 1447, 2074
38-5-263 Creation of a Legally Enforceable Obligation, p. 1978

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42-1071 Revised Marijuana Sampling Protocols - Quality Assurance Testing Requirements, p. 1172, 2075
42-1076 Implementation of Alcoholic beverage Legislation Enacted by the 68th Montana Legislature, p. 875, 2303
42-1077 Tax Haven Corporation Water's Edge Filing Requirements to Implement Senate Bill 246 (2023), p. 962, 1470
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42-1080 Revision of the Contractor's Gross Receipts Tax, p. 1982, 2397
42-1081 Withholding and Estimated Income Tax Payments - Implementation of Senate Bill 399 (2021), Senate Bill 121 (2023), and House Bill 447 (2023), p. 1839, 2324
42-1082 Simplification of Processing Tax Clearance Certificates, p. 1861, 2325
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44-2-275 State Agency Administrative Rulemaking, p. 593, 1471
44-2-276 Business Services Annual Report Filing Fee Waiver in 2025, p. 1384, 1888

EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in October 2024 appear. Potential vacancies from December 1, 2024 through December 31, 2024, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of November 1, 2024.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR OCTOBER 2024

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Barbers and Cosmetologists			
Mr. Bryan Kirkland	Governor	Reappointed	10/17/2024
Bozeman			3/1/2027
Qualifications (if required): Barber			
Board of Crime Control			
Mr. Robert Weber	Governor	Sanders	10/17/2024
Glasgow			1/5/2025
Qualifications (if required): Chief of Police			
Board of Veteran Affairs			
Mr. Denny Lenoir	Governor	Reappointed	10/24/2024
Helena			8/1/2028
Qualifications (if required): U.S. Senate Office Representative			

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2024 THROUGH DECEMBER 31, 2024

Board/Current Position Holder	Appointed By	Term End
Board of Behavioral Health		
Ms. Shari Rigg, Missoula	Governor	12/31/2024
Qualifications (if required): Licensed addiction counselor		
Ms. Joelle Johnson, East Helena	Governor	12/31/2024
Qualifications (if required): Licensed clinical social worker		
Mr. Joseph Suchanic, Missoula	Governor	12/31/2024
Qualifications (if required): Licensed Professional Counselor		
Ms. Amanda Walton, Glendive	Governor	12/31/2024
Qualifications (if required): Certified Behavioral Health Peer Support Specialist		
Board of Chiropractors		
Dr. Marcus Nynas, Billings	Governor	12/31/2024
Qualifications (if required): Licensed Chiropractor		
Mr. Richard Forrette, Clancy	Governor	12/31/2024
Qualifications (if required): Licensed Chiropractor		
Board of Occupational Therapy		
Mrs. Melinda Martin, Helena	Governor	12/31/2024
Qualifications (if required): Occupational therapist actively engaged in practice or teaching		
Ms. Deborah Penner, Butte	Governor	12/31/2024
Qualifications (if required): Member of the general public		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2024 THROUGH DECEMBER 31, 2024

Board/Current Position Holder	Appointed By	Term End
Board of Respiratory Care Practitioners		
Mr. Tony Jay Miller, Joplin	Governor	12/31/2024
Qualifications (if required): Respiratory care practitioner specializing in pulmonary functions or sleep studies		
Mr. Brian Cayko, Great Falls	Governor	12/31/2024
Qualifications (if required): Respiratory care practitioner		
Ms. Melissa Wells, Red Lodge	Governor	12/31/2024
Qualifications (if required): Respiratory care practitioner		
Children's Trust Fund		
Mr. David Landis, Bozeman	Governor	12/31/2024
Qualifications (if required): None stated		
Ms. Elizabeth Siblerud, Kalispell	Governor	12/31/2024
Qualifications (if required): None stated		
CSKT Fish and Wildlife Commission		
Ms. Susan Lake, Ronan	Governor	12/31/2024
Qualifications (if required): Public representative		
Mr. Andy Larsson, St. Ignatius	Governor	12/31/2024
Qualifications (if required): Public representative		
Mr. Alan Mikkelson, St. Ignatius	Governor	12/31/2024
Qualifications (if required): Public representative		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2024 THROUGH DECEMBER 31, 2024

Board/Current Position Holder	Appointed By	Term End
Grass Conservation Commission		
Mr. Richard Stuker, Chinook	Governor	12/31/2024
Qualifications (if required): Active Grazing Preference Rights		
Heritage Preservation and Development Commission		
Ms. Patricia Spencer, Clancy	Governor	12/31/2024
Qualifications (if required): None stated		
Ms. Susan Hardman, Hamilton	Governor	12/31/2024
Qualifications (if required): None stated		
Humanities Montana		
Ms. Jessica Flint, Billings	Governor	12/31/2024
Qualifications (if required): Public representative		
Information Technology Board		
Mr. Laef Olson, Bozeman	Governor	12/31/2024
Qualifications (if required): None stated		
Montana Council on Developmental Disabilities		
Ms. Virgeana Brown, Belgrade	Governor	12/31/2024
Qualifications (if required): Parent/Family advocate		
Mr. Rod Johanson, Great Falls	Governor	12/31/2024
Qualifications (if required): Local, non-governmental agency interested in services		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2024 THROUGH DECEMBER 31, 2024

Board/Current Position Holder	Appointed By	Term End
Montana Council on Developmental Disabilities Cont.		
Ms. Tamara Hall, Bozeman Qualifications (if required): Parent advocate	Governor	12/31/2024
Mr. Tom Cronelly, Butte Qualifications (if required): Parent/family advocate	Governor	12/31/2024
Ms. Shirley Willis, Kalispell Qualifications (if required): Sister program	Governor	12/31/2024
Rangeland Resources Committee		
Mr. John A. Hollenback, Gold Creek Qualifications (if required): None stated	Governor	12/31/2024
Mr. Ronald R. Devlin, Terry Qualifications (if required): None stated	Governor	12/31/2024
Ms. Diane Ahlgren, Winnett Qualifications (if required): None stated	Governor	12/31/2024
Mr. Sigurd M. Jensen, Elmo Qualifications (if required): None stated	Governor	12/31/2024
Ms. Leah Lewis, Boulder Qualifications (if required): None stated	Governor	12/31/2024

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2024 THROUGH DECEMBER 31, 2024

Board/Current Position Holder	Appointed By	Term End
Rangeland Resources Committee Cont.		
Mr. Jim Anderson, Chinook	Governor	12/31/2024
Qualifications (if required): None stated		
State Sports Wagering Commission		
Ms. Janna Taylor, Dayton	Governor	12/31/2024
Qualifications (if required): Public Member		
Statewide Independent Living Council (SILC)		
Ms. Tami Hoar, Missoula	Governor	12/1/2024
Qualifications (if required): Person with a disability employed by state agency or center for independent living		
Ms. Savanah Strauser, Poplar	Governor	12/1/2024
Qualifications (if required): Parent of a child with a disability		
Mr. Christopher Johnsrud, Great Falls	Governor	12/1/2024
Qualifications (if required): Person with a Disability		
Ms. Melanie Beagle, Butte	Governor	12/1/2024
Qualifications (if required): Not employed by State agency or Center for Independent Living		
Traumatic Brain Injury Adv Council		
Mr. Kenneth C. Brewington, Missoula	Governor	12/31/2024
Qualifications (if required): Injury Control or Prevention Programs Rep		

EXECUTIVE BRANCH VACANCIES – DECEMBER 1, 2024 THROUGH DECEMBER 31, 2024

Board/Current Position Holder	Appointed By	Term End
Traumatic Brain Injury Adv Council Cont.		
Ms. Teresa Anderson, Park City	Governor	12/31/2024
Qualifications (if required): Advocate for Brain Injured Person		
Water Pollution Control Advisory Council		
Mr. Chad Bauer, Missoula	Governor	12/31/2024
Qualifications (if required): Representative of the inorganic waste disposal industry		
Mr. Adam Pummill, Missoula	Governor	12/31/2024
Qualifications (if required): Engineer with sanitary engineering experience		
Mr. Jeffrey Mark, Hamilton	Governor	12/31/2024
Qualifications (if required): Supervisor of a soil and water conservation district		
Mr. Ronald Pifer, Stevensville	Governor	12/31/2024
Qualifications (if required): Fisheries biologist		
Ms. Teri Polumsky, Hamilton	Governor	12/31/2024
Qualifications (if required): Realtor or developer representative		
Mr. Lee Bruner, Whitehall	Governor	12/31/2024
Qualifications (if required): Irrigated agriculture representative		
Mr. Shannon Holmes, Livingston	Governor	12/31/2024
Qualifications (if required): Public works director		

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CHRISTI JACOBSEN
SECRETARY OF STATE

P.O. BOX 202801
HELENA, MONTANA 59620